LOCAL GOVERNMENT IN FRANCIA AND ENGLAND

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A COMPARISON OF THE LOCAL ADMINISTRATION AND JURISDICTION OF THE CAROLINGIAN EMPIRE WITH THAT OF THE WEST SAXON KINGDOM

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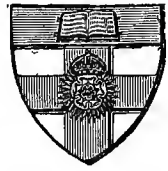

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H. M. C.

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ANALYSIS

LOCAL GOVERNMENT IN FRANCIA AND ENGLAND

CHAPTER I

INTRODUCTION

From the time of Palgrave onwards, historians, both English and foreign, have discovered analogies between Frankish and Anglo-Saxon institutions. Some writers, notably Stubbs, have pointed out resemblances so close as to provoke inquiry into the relation between the two sets of institutions. Has one country borrowed from the other, or are the features they have in common part of their inheritance from a distant past, or, again, arethe resemblances merely coincidences resulting from different processes ?

The Roman heritage gave to the Frankish Empire not only a semblance of unity, a centralized organization and a spurious efficiency, but also the means of putting them on record, with the additional rigidity likely to follow from that power. In the Capitularies of the Carolingian kings, disjointed, ambiguous and artificial as they are, can be traced out with considerable certainty the framework of a governmental system that is fairly comprehensive and consistent. Within its limits turbulent forces are at work, under the pressure of which the framework is destined to fall in pieces, but we are given an impression of unity, subordination and centralization.

On the other side are the Anglo-Saxon laws and charters,

both fragmentary and confused. The fact that there are two official languages instead of one may make for greater accuracy, but certainly not for greater simplicity. There are great gaps in our material; between Ine and Alfred no legislation and but few other records. The scanty light we have shines in turn upon Northumbria, Mercia and Wessex; we have enough material to see that there were wide local differences without having the means accurately to define those differences. Our governmental system has to be pieced together from a series of facts or references gathered at very different dates, instead of from a long series of royal instruments issuing from the royal chapel, all within little more than a century. It is true that in Francia charters and formulæ and other private documents introduce many questions of difficulty; but the abundance of material helps to solve its own problems.

When the question of the relation of the two systems arose, the natural inclination was to suppose that the less perfect and less symmetrical would borrow the institutions of the more centralized and complete. It might be thought that England, owing religion and all that religion involved to the Continent, would seek there also for governmental improvements. Believers in a close relation between the two countries have as a rule taken this view of the question. But, as is well known, and as we shall try to show, the debt was by no means all on England's side, and a recent writer [1] has suggested that at least one new feature of Carolingian policy and administration was borrowed from England. His suggestion will be noticed, but it does not really touch our problem, which is limited to the relation of West Saxon and Carolingian local institutions, and can only incidentally refer to those of Northumbria.

[1] Guilhiermoz, *Origines de la noblesse.*

Materials are lacking for the construction of a sketch of West Saxon institutions under the contemporaries of the earlier Carolingians. It is only with Alfred that we can pick up the thread dropped in the eighth century, and attempt to estimate what influence, if any, foreign relations have had upon governmental and local institutions. If there was a code of Egbert, it is lost. In Alfred's prologue, however, in which he speaks of the codes of Ine, Æthelberht and Offa, no reference is made to any other West Saxon code. It is highly probable, therefore, that none such existed. In very many respects, also, Alfred's reign is one of construction and innovation. The prologue to the laws reflects that respect for conservatism which is learnt by the practical reformer. "I dared not thrust myself forward, to write down much of my own, for it was unknown to me how that would please those that come after me." A king who was at once a reformer and a pioneer; who formed new laws to supplement the old ones; who recast the classics for the benefit of his people; who found new means to meet new military problems, frankly taking the best wherever he found it and applying it to the matter in hand; such a one might well look across the Channel for political no less than for literary schoolmasters. In a reign of this constructive activity we might well seek for the traces of innovation and adaptation.

Such innovation could hardly be based on the decadence and disorder of the later Carolingian rule. By whatever channel such an influence could arrive, whether by way of Mercia or directly from Francia, whether at an earlier date through Alfred's grandfather, or at a later date through Alfred's contemporaries, it is from the system of Charles the Great that a foreigner would draw inspiration. The system might not fit the facts of local divergence even in Charles's own days; later it might not agree

with the practice of an empire that was already divided and decentralized, an empire only in name; but it was the official theory of government. The numberless references to the collection of Ansegis which we find in the later Capitularies show that though facts might have altered, the ideal polity was the same that it had been before the fraternal wars of Lewis's reign.

We are compelled, therefore, to base our comparison on conditions separated by a century, and to set limits to the problem. The chief characteristics of the Frankish system may be traced in the period 768–840, and though occasional references will be made to later developments, this will be the main theme. In Wessex, the reigns of Alfred and Edward the Elder will be the chief period, though here we are more dependent on later material, and illustrations will be drawn from other periods.

In attempting to investigate this problem the evidence for the connection between Francia and England before and during the Carolingian period will first be considered; and then the local governmental system in each country will be described and compared. The benefice and the vassal system in Francia will be compared with what is known of the vassal class and dependent land tenures in England, and an attempt will be made to estimate the extent of the growth of private jurisdictions. The immunity will be compared with the early English franchise, and the position of the royal villa with that of the land of the fisc in England. The military systems of the two countries will be compared also, based as they are in each country on the local unit. Lastly, an attempt will be made to sum up the results of the study.

If no practical or even certain results are attained by this investigation, the plea of M. Langlois may be offered in part excuse. "If historical science does not consist solely in the critical enumeration of past phenomena, but

rather in the examination of the laws which regulate the succession of such phenomena, clearly its chief agent must be the comparison of such phenomena as run parallel in different nations; for there is no surer means of knowing the conditions and causes of a particular fact than to compare it with analogous facts." [1]

[1] *E. H. R.*, 1890, p. 259.

CHAPTER II

RELATIONS OF FRANCIA AND ENGLAND IN THE EIGHTH AND NINTH CENTURIES

STUBBS, in his lecture on the "Beginnings of the Foreign Policy of England in the Middle Ages," [1] classifies English relations with the Continent under the three following heads: ecclesiastical matters; royal and noble connections; and commercial relations. His treatment is not exhaustive, nor his classification entirely satisfactory. A better arrangement would seem to be: literary and ecclesiastical matters (the two being practically inseparable); political matters; commercial matters. From the facts classified under these heads may be deduced the possibility or probability of a connection in institutional matters between the England of the West Saxon Supremacy and the Continent of the Carolingian period.

I. It has been often pointed out that England was in part repaying an old debt when she sent her missionary priests and bishops to Friesland, Saxony and Bavaria in the seventh and eighth centuries. From Wilfred's mission to Friesland in 678 to the death of Boniface in 755 a constant stream of teachers left this island for the Continent. Of these Boniface was not the only one to reach high position; Lull of Mainz, Willibald of Eichstadt, and Burkhard of Wurzburg were all English born. Their work, moreover, was not all pioneer. Boniface in especial had a large share in the work of purifying the Frankish Church from the abuses of the times. His

[1] Stubbs, *Early English History*, p. 354 ff. Ed. Hassall, 1906.

influence is again traceable in the Capitulare Liptinense[1] of 743, which in all probability records the compromise over Church lands made by Pippin, and confirmed by his son at a later date. Brunner has pointed out also that the rite of unction appears to have been introduced from England in 753, when Boniface anointed Pippin king of the Franks.[2] We may note also the presence of English bishops at the famous Council of Frankfort in 794.

Besides this religious assistance afforded by England to Frankland, literary help was given. If Boniface reformed the Church in Gaul, and founded the Church in Germany, Alcuin had his part to play as a missionary of culture. Notwithstanding the learning of the Italian and Irish scholars at the court of Charles the Great, Alcuin had the first place there from his arrival in 781 to his retirement to Tours in 795. Alcuin represented the traditions of Northumbrian learning; he was the last great scholar of Bede's school. His position, resting as it did on the personal whim of the Emperor, was not altogether secure; his intellectual pre-eminence was hardly questioned so long as he remained at court.

In the case of both Alcuin and Boniface we have abundance of evidence that the relations with the mother country were kept up. Of the hundred and fifty letters of Boniface and Lull printed by Dümmler, thirty-five at least are addressed to English monasteries or individuals. One letter from Boniface and seven other English bishops in Germany to King Æthelbald refers to the latter's effectual repression of feuds among his nobles.[3] On the other hand, Æthelbald is rebuked for

[1] 743. 28, 2. Cf. Boniface, Ep. 60.

[2] Brunner, R. G., II. p. 19. *A. L. M.*, 750. "Pippinus . . . electus est ad regem, et unctus per manum santae memoriae Bonifacii archiepiscopi."

[3] Boniface, Ep. 73, quoted by William of Malmesbury, *G. Regum*, I. 80. R. S.

his evil life, and the invasions of the Saracens in Southern Gaul are quoted as an example of the evils he may bring on England by his sins. The majority of the letters are moral and didactic in tone, and do not refer particularly to public events. They reveal, however, the close relations between the clergy of Francia and England. Gifts are exchanged, a copy of Bede is asked for in exchange for a copy of the Epistles of Gregory.[1] Cloaks and coverlets of goat's hair are sent as gifts.[2] A report of the General Council of 747 is given in a letter to Cuthbert of Canterbury, in which Boniface suggests that some restraint should be put on the pilgrimages of women to Rome, since these too often result in their downfall, and disgrace to the English Church.[3] The international position of the Church is well illustrated in this correspondence.

The letters of Alcuin are similar in character to those of Boniface. Many of them are directed to kings or princesses,[4] but even these are mainly didactic in purport.[5] He writes to the monks of York, of Wearmouth or of Yarrow, the Archbishop of York, to Lindisfarne, to the Archbishop of Canterbury and to private friends. His tone throughout is that of the exile;[6] he is continually referring to his hopes of coming over to England again. He is keenly interested in Church politics at home; while as to secular politics he preserves a non-committal attitude, exhorting kings and ex-kings alike to repentance and virtue.[7] He is impressed by

[1] Boniface, Ep. 75. [2] *Ibid.*, Ep. 75, 76. [3] *Ibid.*, Ep. 78.
[4] Alc., Ep. 16, 18, 30, 61, 79, 101, 102, 105, 108, 109.
[5] The exceptions will be mentioned below.
[6] Note letter to Æthelred of Northumbria. "Duplici germanitate convives sumus, unius civitatis in Christo, id est matris ecclesiae filii, et unius patriae indigene . . . Ecce trecentis et quinquagenta annis quod nos nostrique patres huius pulcherrime patrie incole sumus." Ep. 16.
[7] Alc., Ep. 108, 109.

the greatness of Offa, whilst he laments his bloodshedding propensities, and views the early death of Ecgfrith as an instance of the visitation of the father's sins on the children.[1] In one of his letters there is a possible reference to the lost code of Offa.[2] His first love is for Northumbria, to him a different *gens* from Mercia;[3] but he writes, as we have seen, to all parts of England. His letters form a unique and valuable contribution to the history of the eighth century, in spite of their vagueness and silence on the topics where we are most anxious for information.[4]

Thus in the eighth century both Northumbria and Wessex bore their part in the advancement of religion and learning in Europe. In the ninth century the tables were turned. Francia was now the centre of learning; internal divisions and external attacks had overwhelmed the power and the culture of Northumbria together, and Alfred, seeking to restore letters in Wessex, found himself obliged to send across the Channel to secure a teacher for his ignorant clergy and young noblemen. Grimbald of St. Bertin and John the old Saxon were sent; and a letter is extant in which Fulco of Reims commends Grimbald to Alfred,[5] though its authenticity has been questioned. Through these channels Frankish learning might be directly disseminated in England, whilst there is evidence that it was indirectly conveyed by other means. Besides Grimbald and John, teachers came to Alfred from Mercia; Werfrith of Worcester, Plegmund, Æthelstan and Werewulf;[6] and, as we shall

[1] Alc., Ep. 122.

[2] *Ibid.*, Ep. 122, "mores bonos . . . observent, quos beatae memoriae Offa illis instituit."

[3] *Ibid.*, Ep. 122.

[4] Dr. von Sickel (*Alcuinstudien*, p. 467) suggests that the letters containing more important political news or opinions were destroyed at once by the recipients.

[5] B. 556.

[6] Asser, c. 77.

see, the relations of Mercia and Francia were close in the reigns of Offa and Charles. From Alfred's preface to the *Cura Pastoralis* it may be inferred that Mercia was the chief home of learning in England at the beginning of his reign.[1] Here, then, may be found another channel for Frankish influence. Again, the *Vita Caroli* speaks of Charles's relations with the Scots or Irish,[2] with whom Alfred had dealings,[3] whilst Asser shows traces of both Frankish and Irish influence.

The evidence afforded by Asser's *Life* has been indicated with great completeness by Mr. Stevenson.[4] In matters of style the relation is unmistakable; not only in the general construction of the work, which is clearly modelled on Einhard's *Vita Caroli*,[5] and has a considerable resemblance to the lives of Lewis the Pious by Theganus and by the Astronomer, but also in the use of words of Frankish origin or with Frankish application. Instances of this are *Ministeriales*,[6] *Galli*[7] (for Franks), *Capellanus*,[8] *Theotisci*,[9] *fiscus*,[10] *castella*[11] (for castle), *curtum*,[12] *indiculus*[13] (letter), *satelles*,[14] *fasellus*,[15] *senior*[16] (for lord), *cambra*[17] (camera). Mr. Stevenson discovers traces of Celtic (Breton) influence in the use of the word *famen*,[18] suggests that a Gaulish version of the Bible was used by Asser instead of the Vulgate,[19] and points out at least one

[1] "There were very few on this side of the Humber who could understand their rituals in English or translate a letter from Latin into English, and I believe that there were not many beyond the Humber. I cannot remember a single one south of the Thames."

[2] *Vita Caroli*, c. xvi.

[3] Asser, c. 91, 102; and 76, "Franci autem multi, Frisiones, Galli, pagani, Britones et Scotti, Armorici sponte se suo dominio subdiderunt."

[4] Asser's *Life of King Alfred*, ed. W. H. Stevenson, 1904.

[5] Cf. esp. *Vita Caroli*, Preface; and Asser, c. 73.

[6] C. 70. [7] C. 70. [8] C. 77, 104.
[9] C. 13. [10] C. 102. [11] C. 91.
[12] C. 22, 75, 81, 100. [13] C. 79. [14] C. 100.
[15] C. 53, 55. [16] C. 13, 97. [17] C. 88, 91.
[18] C. 79. [19] Stevenson, Introduction, xciv.

simile dear to Alcuin and other Frankish scholars.[1] In addition to the traces of Frankish influence on Asser's style, there is evidence of personal knowledge of Frankish conditions on his part. Details supplementing the narrative of the Chronicle which indicate a minuter knowledge of Francia are found in chapters 61, 68, 70, 82, 84 and 85; whilst in the account of the eclipse of 878 or 879 [2] Mr. Stevenson, with great ingenuity, has discovered indications that the author saw the eclipse from Francia, not from England, and suggests Fulda as a likely spot.[3]

The land-book itself, as used in England from the seventh century onwards, is of foreign origin. Brunner [4] believes that it came from Roman law, probably direct from Italy, but possibly by way of Francia. It is interesting, however, to note the appearance of some words of Frankish origin in the charters of Egbert's reign and later. Such are *graphio* [5] and *paràfrithis*,[6] both of which occur in charters passed as genuine by Kemble. *Vasallus* [7] and *beneficium* [8] do not occur till a later date. Stubbs, in his preface to the Councils,[9] indicates the close relation of English and Frankish Penitentials and Canons. The *Liber Legum Ecclesiastorum*, printed by Thorpe as "Ecclesiastical Institutes," is a translation of a work by Theodulf of Orleans. The so-called Penitential of Theodore contains quotations from the *Admonitio Generalis* of 789.[10] The so-called Penitential of Egbert is mainly a translation of a work by Halitgar of Cambray (*floruit* 825). Boniface's letters, as we have seen, indicate a constant interchange of manuscripts between England

[1] C. 76.
[2] C. 59; *v.* Stevenson, p. 280 ff.
[3] Note also the evidence afforded by the rapid extension of the Carolingian minuscule.
[4] Brunner, *Urkunde*, p. 187.
[5] B. 413.
[6] B. 395 (A.D. 828), 413, 544.
[7] Found in B. 601 (A.D. 903), 769, 895, 956, 1197.
[8] B. 1136 (A.D. 964).
[9] Haddan and Stubbs, I, xiii.
[10] 789. 53–62.

and Francia, and the confused condition in which Stubbs found the Penitentials is directly traceable to their international use.

Among ecclesiastical channels of influence should perhaps be reckoned the intercourse afforded by pilgrimages. All who went to Rome would pass through Francia, and the number of pilgrims may be inferred from the letter referred to above, as well as from other indications.[1] Free passage to the pilgrim was one of the terms of agreement between Offa and Charles [2] in 790. We may note, on the other hand, that a charter of Egbert's refers to the *Galli et Brittones* who are *peregrini* to Abingdon.[3]

Thus all the evidence goes to show that there was a very intimate relation in ecclesiastical and literary matters between Francia and England in the eighth and ninth centuries.

II. The political relations of England and Francia at this period must be inferred from a series of isolated facts, whose importance it is difficult to appraise on account of the scantiness of the sources. Marriage alliances make up a great part of the evidence. Alfred's father Æthelwulf takes as his second wife Judith, daughter of Charles the Bald, in 855, on his return from Rome. Alfred's daughter Ælfthryth marries Baldwin of Flanders. The four daughters of Edward the Elder marry Otto I of Germany, Charles the Simple, Hugh the White, and William of Aquitaine.[4] These marriages should be viewed probably as indications, not as causes, of the relations between the two countries.[5] The influence of the queen may be, as Mr. Larson has pointed out,[6] of

[1] *Ann. Bert.*, 839. Asser, c. 11, etc. [2] Alc., Ep. 100.
[3] B. 413. [4] Æthelweard, Prologue.
[5] Mr. Plummer (*Two Saxon Chronicles*, II. p. 80) suggests that the marriage of Judith and Æthelwulf was due to a desire for an alliance against the Danes.
[6] L. M. Larson, *The King's Household before the Norman Conquest*, p. 194. 1904.

great importance in the court and kingdom, but from what Asser tells of Judith, her influence is not likely greatly to have modified existing conditions in Wessex.[1]

Indications as to the international politics of the period may be gathered from various sources. Simon of Durham speaks of the correspondence of Eadberht of Northumbria and Pippin,[2] but we have no means of knowing on what authority the statement is based. Boniface's letters are, as we have seen, addressed not merely to bishops and monks, but also to kings and princes. For the reign of Charles the Great the Frankish Annals and Alcuin's letters are our chief sources, but it is to the *Gesta Abbatum Fontanellensium*[3] that we owe our knowledge of the marriage negotiations between Charles the Great and Offa in 788. Charles sought the hand of Offa's daughter for his son, but Offa suggested also that his son should marry Charles's daughter; in consequence the negotiations broke down, and Charles threatened to close the Frankish ports to English merchants. Earlier letters, both those between Charles and the Pope, and those between Charles and Offa, indicate intimacy and friendliness;[4] whilst those of a later date show that friendly relations had been restored.[5] Alcuin's letters show him endeavouring to act as a mediator between the two kings.[6] He also promises the monks of Lindisfarne to speak to Charles on their behalf after the sack of their monastery in 793.[7] His letter of 796 describes

[1] Asser, c. 17.

[2] Sim. Dunelm., *Hist Eccl. Dunelm*, Lib. II. c. iii.

[3] *Gesta Abbatum Fontanellensium*, c. 16. "Multis vicibus . . . ad praefatum regem Offam legationibus functus est (Gervoldus). Novissime vero propter filiam ejuisdem regis quam in conjugium expostulabat Carolus junior, sed illo hoc non acquiescente nisi Berta, filia Caroli magni ejus filio nuptui traderetur, aliquantulum rex potentissimus commotus, praecepit ut nemo de Britannia insula ac gente Anglorum mercimonii causa littus oceani maris attingeret in Gallia."

[4] Alc., Ep. 87.

[5] *Ibid.*, Ep. 85, 100.

[6] *Ibid.*, Ep. 7, 9, 82.

[7] *Ibid.*, Ep. 20.

Charles's wrath at the news of the death of Æthelred of Northumbria.[1] The annals for 809 show friendly relations still subsisting between Mercia and Francia; a papal legate, captured by pirates, and carried off to Britain, was there redeemed by Cenwulf, Ecgfrith's successor, and sent back safely to Rome. In this year also Charles extended his hospitality to Eardwulf of Northumbria, Æthelred's son, who was driven from his kingdom in 806. He set him on his way to Rome.[2] There is evidence of his kindly activity on Eardwulf's behalf in his correspondence with Leo III. There seems, however, no reason to accept the statement of the *Annales Lindisfarnenses* that Eardwulf "duxit uxorem filiam regis Caroli" in the face of Einhard's statements.[3]

Charles's relations with Wessex are perhaps of most interest in connection with our main theme. Egbert, driven from Wessex in 787, took refuge with Offa, and came on to Charles's court in 788, where he remained until his accession in 802 to the throne of Wessex.[4] These fourteen years offer a wide field for conjecture, but the silence of the Frankish Annals forbids any determination of the probable effects on Egbert of his stay in Francia. It may be noted, by the way, that the courtesy was repaid in kind when Athelstan received his young nephew, Louis d'Outremer, at a later date.

With these authentic records of royal fugitives may be compared the story told by Asser of Eadburh—daughter of Offa and wife of Beorhtric,—who came to Charles's court, having poisoned her West Saxon husband, and was offered the choice between Charles himself and one of

[1] Alc., Ep. 101.

[2] *A. L. M.*, 808. *Leonis III.* Ep. 2, 3. *M. G. H., Ep. Kar. Aevi*, III. p. 89–92.

[3] *Vita Caroli*, c. 19. "Nullam earum cuiquam aut suorum aut exterorum nuptum dare voluit, sed omnes secum usque ad obitum suum in domo sua retinuit."

[4] *A. S. Chron.*, 836.

his sons as a husband. She chose the son, and was in consequence rejected by Charles himself, who, however, made her abbess of a convent.[1] There is, as Mr. Stevenson says, no inherent impossibility in the story; but it has a romantic tone, and is unconfirmed by any other evidence.

There is thus material for belief in a fairly close connection between English and Frankish politics in the reign of Charles. Under Lewis the Pious there is no sign of diplomatic relations; and the silence of the Chronicle at this period contrasts with the later accounts of the invasion of the Northmen from year to year, which in the reign of Alfred reflect a realization of unity of interest.[2]

III. There are few indications of the commercial relations of England and Francia. As far back as 710 a charter of Childebert's had referred to the toll paid by the Saxons and others from far.[3] M. Flach points out[4] the significance of the fact that the word used for strangers in Francia—*albani*—means British. When Charles and Offa quarrelled in 789, Charles forbade all trade in English goods within his kingdom.[5] When friendly relations were restored, Charles, in promising a free passage to English pilgrims to Rome, stipulated that they should be genuine pilgrims, not merchants and smugglers.[6] In the same letter he promised that English merchants

[1] Asser, c. 15.

[2] See the years 880, 881, 882, 883, 884, 886, 887, 890, 891, 893, 897.

[3] Bouquet, IV. 684. It is possible, however, that the continental Saxons may be meant.

[4] Flach, I. p. 159.

[5] The *Gesta Abbatum Fontanellensium* says that Charles threatened to close all Frankish ports to English vessels, but was dissuaded from doing so by Gerwold. Alcuin's letter, however (Ep. 7), declares that Charles and Offa have each excluded the other's merchants. "Aliquid . . . dissensionis . . . nuper inter regem Karolum et regem Offam exortum est, ita ut utrimque navigatio interdicta negotiantibus cessat."

[6] Alc., Ep. 100.

should be under the royal protection, according to old custom, and should have direct appeal to him, declaring that Frankish merchants would likewise appeal to Offa in case of suffering any attack. Giles suggests that this trade consisted to some extent in gold-work of a kind like that on King Alfred's jewel.[1] Again there was, it seems, a demand for English cloaks.[2] Evidence of close commercial relations is to be found in the coinage of the two countries. The question is complicated and somewhat technical; it has, however, been shown conclusively[3] that the change from the earlier English *Sceatt* currency to the later currency of pennies is a result of Frankish influence. The very name *Mancus*[4] is an unmistakable proof of foreign origin, being Arabic in etymology, and coming probably from Spain, but possibly from the East, with which Charles had diplomatic relations.[5] Foreign bodies are found owning land in England. Ælfthryth makes a grant in 918 of land to an abbey of Ghent,[6] and St. Denys[7] also held land in England.[8]

IV. General resemblances in institutions between the two countries have been traced. It appears possible that Alfred's court school[9] owes something to that of Charles the Great for the young nobles. It has been suggested that Alfred borrowed a system of Missi Dominici

[1] *Memorials of King Alfred*, p. 333. (1863.)

[2] Alc., Ep. 100. Charles to Offa. "Nostri de prolixitate sagorum deposcunt; ut tales iubeatis fieri, quibus antiquis temporibus ad nos venire solebant."

[3] Seebohm, *Tribal Custom in A.-S. Law;* York Powell, *E. H. R.*, p. 133, 1890; Chadwick, p. 5.

[4] Chadwick, p. 11. *Mancus* is first found in Frankish charters 778, in English Charters 799.

[5] *Vita Caroli*, c. 16.

[6] B. 661.

[7] Mr. Stevenson (*E. H. R.*, p. 741, 1891), though proving that the four charters to St. Denys given in the Cartularium Saxonicum are all forgeries, thinks that they relate to genuine grants.

[8] We may note also the employment of Frisian sailors by Alfred. *Chron.*, 885, 897.

[9] Asser, c. 75, 102.

from Charles, but the theory is based upon an allusion in Asser which might well be interpreted in a more general sense.[1] Alfred's manner of administering justice in person has been paralleled with that of Charles, but again the descriptions are too general to be of much real value.[2] The divisions of the kingdom on the death of Æthelwulf, and indeed before it, and on the death of his sons, have been likened to Frankish *Divisiones Regnorum;* but here, again, we have to do with a custom that was pretty generally diffused, and is easily explicable without a theory of direct imitation. Some inferences may perhaps be drawn from Asser's use of the word *paga* to translate *shire,* the word being peculiar to him. It is just as likely, however, to imply a false analogy as any direct relation of the pagus to the shire. Into the possibility of such a relation an inquiry will be attempted below.

It has long been the fashion to compare the work and the position of Alfred with those of Charles the Great. It may be fairly said that such a parallelism is the result of a love of analogies not well grounded on facts. Beyond the literary revivals there is hardly a resemblance to be found that does not require considerable exaggeration to become pointed. On the wider question of institutions, however, it is harder to put and to answer the question. The relation of Alfred's organization of local government to that of the Frankish Empire cannot be dismissed summarily.

[1] Asser, c. 106. [2] *Ibid.*, c. 105–106; B. 591; *Vita Caroli*, c. 24.

CHAPTER III

THE GOVERNMENT OF THE COMITATUS AND THE SHIRE

1. *The Comitatus*, 768–840.

Comparatively speaking, there is plenty of material from which to deduce both the theory and the practice of local government under the Carolingians. The Capitularies and other sources give us evidence of the ideal relations of the various members of the administrative system; and also of the abuses which forbade the realization of those ideals.

Thus it is clear that theoretically the emperor is the central point of the organization. The picture drawn by Fustel de Coulanges of the magnificent position of Charlemagne at the heart of the empire,[1] with all things dependent on or radiating from him, may perhaps be accepted as the ideal at which the emperor aimed, but can hardly be considered a faithful representation of facts. It is at least as clear that the count is practically the backbone of the system at this period, setting aside all questions of origins.

(*a*) *The Relation of the Count to the Central Government.*

His dependence on the king is, however, well marked. The *Diplomata* show a large and constantly varying body of counts in attendance on the king;[2] the Capitularies, and Hincmar's *De Ordine Palatii* show him co-operating

[1] Fustel de Coulanges, *Transformations de la royauté*, p. 614.

[2] Mühlbacher, *Diplomata*, Nos. 63, 65, 102, 110, 197, 204, 216, etc. The average number of names mentioned is six or seven; the same name is very seldom found twice.

in the forming of Capitularies.[1] The count is educated at the royal court, and is bound to report himself there annually, probably on the occasion of the *placitum generale* which he is bound to attend.[2] The Capitularies represent him as sending a *missus* with the yearly report at about Easter time.[3]

The count is appointed by the king, and his office is not hereditary. It is held apparently for life, or so long as its holder does not forfeit it by misconduct.[4] The *Admonitio* of Lewis the Pious (823–825), represents well the official relations of the count and the emperor. "Monemus vestram fidelitatem ut memores sitis fidei nobis promissae et in parte ministerii nostri vobis commissi, in pace videlicet et iustitia facienda vos metipsos coram Deo et . . . hominibus tales exhibeatis ut et nostri veri adiutores et populi conservatores iusti dici et vocari possitis . . . Etsi aliqua persona in aliquo vobis impedimentum fuerit nobis illud notum fiat, ut nostra auctoritate adiuti ministerium vestrum digna adimplere possitis." [5] This represents the system of government as it should be.

On the other hand, the local independence of the count and his abuse of his powers is proved on every hand by the restrictions and prohibitions contained in the Capitularies. His independence and his local authority at once are strengthened by the manner in which he receives a recompense for his service. He is not paid directly by the king, but various privileges and possessions are attached to the county itself. He has a special *wer*;[6]

[1] *De Ord. Pal.*, c. 35. The counts and the other magnates debate apart. 803. 112; 801–813. 170; 811. 161, 1.
[2] 782/6. 191; 803. 116, 14; 829, II. 9.
[3] 781/6. 193, 10.
[4] 779. 49, 11; 782. 192, 7. See instances quoted by F. de C., *Transformations de la royauté*, p. 425–6.
[5] 823–825. 304, 8.
[6] *Lex Chamav.*, c. 7.

he has the right to exact certain services as a royal official;[1] he has the third part of all *freda*[2] and of other dues; and he has the enjoyment either of a royal benefice[3] or of certain lands attached to the county.[4] Thus he is a great local landowner as well as a representative of the central government,[5] and his relations with his official subordinates tend to approximate to those of any lord with any vassal. His vassals have a special duty of suit at his courts.[6] He may have an advocate to manage his large estates, and is forbidden to appoint his centenarius to the position.[7] The very perfection of the Carolingian hierarchy paves the way for local independence; the tie between the count and the centenarius is closer than that between the count and the king. The count takes advantage of his double position to grant out the lands of the fisc or convert them to his own uses.[8] In the capitularies, especially the Italian capitularies, there are signs of his oppression of the

[1] 826. 315, 10.

[2] 790. 201, 5; 811. 166, 2. Possibly some other payments—"Solidum unum de notitia." 801/14. 145, 2.

[3] 806. 131, 6.

[4] This land is distinct from the royal benefices as still forming a part of the lands of the fisc. Bouquet, VI. 509 (817): "de fisco nostro quem R. comes in ministerium habet." Cf. 864 II. 314, 8: "Villis quae sunt de comitatibus." The land attached to the county comes to bear the name *comitatus* itself, and can be transferred to another than the count. *Form. Imp.*, 3. A count exchanges land, "ex comitatu suo aut benefitio suo." 832. II. 64, 8. "Comitatus pertinentia quae comites non habent." Waitz, IV. p. 165 ff., gives instances. Occasional references are also found to *terra vicarialis*, and *vicecomitalis* (Poupardin, *Le royaume de Provence*, pp. 373–4).

[5] Thus he receives a grant of land from the king. His lands are referred to: Mühlbacher, *D.K.* p. 244. He exchanges land with the bishop; *ibid.*, 275. Cf. *Form. Imp.*, 3, 36. He is permitted to divide his lands among his sons: *D. K.*, p. 280. Reference is here possibly made to a royal benefice. Einhard's letters again show us the count as a local magnate rather than a royal official: *v.* Ep. 48, 58.

[6] 809. 148, 5.

[7] 819. 290, 19.

[8] Mühlbacher, *D. K.* 224; I. 217, 9; 806. 131, 6. Note also the command against afforestation, 819. 291, 22.

pagenses by unjust exaction of services and of tolls.[1] The formulae show the count enslaving free men.[2] The capitularies give proof that he abuses his military position by forcing men to go to the host till they are beggared,[3] by depriving men of their weapons, and by exacting fines twice over.[4] He abuses his judicial powers not only by taking bribes,[5] but also by holding placita frequently for the purpose of imposing fines for non-attendance;[6] whilst, on the other hand, he neglects his duties to go hunting, or holds placita when he is not sober.[7]

Such evidence as this must be borne in mind when the position and the duties of the count are being considered.

(*b*) *The Count's District.*

The social and military position of the *dux* is in all probability superior to that of the *comes;* nevertheless the *comitatus* or *pagus*,[8] and not the *ducatus*, is the administrative unit of the empire. During the earlier Carolingian period, indeed, the ducatus has no very definite historical significance. The missi dominici pay their visits of inspection by counties.[9] The county is the limit of the count's jurisdiction;[10] witnesses before him must be good men of the county,[11] and the *placitum majus* is an assembly of all the natives in

[1] 801. 144, 2; 790. 201, 13; 815. 261, 1; cp. 806/10, 211.
[2] *Form. Imp.*, 5. 14. [3] 811. 165, 2, 3. [4] 808. 138, 6.
[5] 790? 70, 28; 801. 240; 802? 103, 38; 813. 174, 10; 819. 291, 21.
[6] 781/810. 207, 12; 816. 270, 3.
[7] 789. 63, 17; 803. 116, 15.
[8] *Pagus* is still found occasionally in the more general geographical sense, appearing to include two or more *comitatus* within it; but a general examination of the capitularies and charters proves that, generally speaking, the pagus and comitatus are identical. 805. 124, 11: "Et de ipso pago, non de altero, testes eligantur, nisi forte longius extra comitatem causa sit inquirenda." Cf. 818–19. 283. 10: "Testes vero . . . non aliunde quaerentur nisi de ipso comitatu in quo res unde causa agitur, positae sunt."
[9] 832. II. 64, 6; 823. 306, 20; 829. II 19, 7, etc.
[10] 801–13. 171, 11.
[11] 803. 114, 11; 805. 124, 11; 818. 283, 10.

the county, and those who own land in it.[1] The count leads the men of the county to war, and sees to the repairing of bridges throughout the county.[2] The division of the country into counties is exhaustive; a man must be in one county or another;[3] and as a rule there is one count to each county, though there are signs that two or more counties may be held by the same count.[4]

The count is the king's representative in the county. He vindicates the rights of the fisc in the case of lands which should fall to it;[5] he looks to the keeping of royal benefices by their holders,[6] and generally defends royal interests. He exacts the *censum*, market tolls, and other dues on behalf of the king.[7] His duties are, in fact, well outlined in the general immunity formula—"freda exigendum, mansiones aut paratas faciendum, homines distrigendum, redibutiones requirendum." He enforces the acceptance of good coin, and the rejection of bad coin;[8] in the later capitularies he is found presiding over a mint himself.[9] He promulgates the law in his *ministerium*,[10] and keeps the record of all who have taken the oath of fealty.[11]

He is generally responsible for the order and good government of the county.[12] Bridge and road mending,[13]

[1] Sohm's denial of the existence of a county court has been refuted by M. Beauchet, who follows Waitz in quoting a charter of 825: "factus est publicus conventus P. comitis et totius comitatus eius," and in showing the character of the placitum of 803. 112. (Beauchet, p. 131; Waitz, IV. p. 526 ff.)

[2] 829. II. 16, 11.

[3] 803–13. 157, 4.

[4] 808. 137, 4; cf. 780 ? 52.

[5] Mühlbacher. *D.K.*, pp. 272, 274.

[6] 818. 287, 3; 829. II. 14, 1.

[7] Note the case in Mühlbacher, *D. K.*, p. 17, where the count has exacted toll from a privileged person.

[8] 823. 306, 20.

[9] 864. II. 315, 14; 820. 299, 1.

[10] 803. 112; 805. 141; 823–5, 307, 26.

[11] 792. or 786. 67, 4.

[12] 809. 152, 7.

[13] 787. 197, 7; 829. II. 16, 11. The count can exact work for these purposes from all men, as the duty, with that of watch and ward, forms part of the Trinoda Necessitas.

and entertainment of the missi dominici [1] fall within his sphere of duty, and he controls the holding of markets.[2] He exercises a police supervision, being bound to report conspiracies,[3] and is expected to know the antecedents of every newcomer in his district.[4] He is also bound to warn his neighbours when he banishes thieves.[5] He must have a prison in the county.[6]

As the lieutenant of the crown, the count enforces the duty of military service, the third article of the Trinoda Necessitas. His duties in this field will be treated at greater length below. He organizes the groups of men according to the land they hold, or their other wealth; [7] he sees that all are well equipped according to the royal commands; he leads them to war.[8] He is also bound to keep all men to their duty of military service, vassals of great men as well as *pagenses*. Though there are special *haribannatores* appointed, the count evidently often exacts the fine for neglect of the host himself. His minute knowledge of the district qualifies him to prevent the shirking of this duty, directly or indirectly, on the part of any of his pagenses.

(*c*) *The Count's Tribunal.*

It is on his judicial duties, however, that most stress is laid. Waitz points out what a weight of responsibility in this matter appears to have rested on the consciences of the Carolingian rulers. Their anxiety for the right administration of justice is evident throughout the

[1] 802. 96, 28. Form. Sal. Bign. 16 and Form Imp. 7 give letters of *tractoria* addressed to a count.

[2] 823. 304, 9. [3] 829. II. 16, 10.

[4] The duty of the missus, 801–13. 157, 4; 806. 131, 5; of the count, 864. II. 323, 31, which purports to repeat a capitulary of 807.

[5] 809. 148, 4. [6] 801–813. 171, 11. [7] 825. 325, 3.

[8] Note also Einhard's Ep. 41. The emperor issues commands to a count to assemble together all the counts of the neighbourhood to consider what measures shall be taken if war breaks out again in Bavaria. Cf. 811–813, 177, 12.

capitularies. The count is repeatedly adjured to do justice,[1] and almost as frequently forbidden to take bribes.[2] The holding of placita is a considerable part of his duty.

There are two kinds of placita. A capitulary of Charles rendered attendance compulsory on all men at three placita only in the year,[3] and this command was renewed under Lewis.[4] These were the general assemblies of the pagus, at which all men must attend. But for judicial purposes placita had to be held at the interval of forty days [5] which the procedure of the national laws required. The interval was no doubt not always strictly observed; but the *minora placita* were held throughout the year. At these none were obliged to be present but the scabini, the litigants, and the witnesses to any cases that might be brought before them; [6] though the count's vassals might be required to attend.[7] These *minora placita* might be held wherever the count pleased in the county; but the larger placita must be held where it was customary from old time.[8] The placita were to be held under a roof, for commands to repair the place are frequently given,[9] but not in a church or a church porch.[10] They

[1] 781. 190, 3; 802. 104, 48; 802. 94, 14; 801. 209, 4; 789? 185, 1, etc.
[2] 813. 174, 10; 819. 291, 21; 802. 103, 38, etc.
[3] 810/10. 210, 14. At an earlier period these were held twice a year. 769. 46, 12.
[4] 823 ? 320, 2; 819. 290, 14.
[5] 819. 292, 1. The interval is variable in the Laws. Note. Lex Rib. 30, 33, 72. Lex Sal. 40, 47, 50, 56.
[6] "Neque cogantur ad placita venire praeter ter in anno, sicut in capitulare continetur, excepto scabinis et causatoribus et testibus necessariis." 823. 320, 2.
[7] 809. 148, 5.
[8] 818. 284, 14. "Ubi antiquitus consuetudo fuit de libertate sacramentum adhramire . . . ibi mallum habeatur . . . minora vero placita comes sive intra suam potestatem vel ubi impetrare potuerit habeat." Here *mallum* appears to be used of the greater placitum in distinction to the lesser. Cf. 821. 301, 5.
[9] 809. 151, 25; 809. 149, 13.
[10] 787 ? 196, 4; 813. 174, 21; 829. II. 46, 54.

were not to be held on Sundays, or on certain saints' days;[1] nor in the months when the missi held their placita.[2] This last regulation probably applies only to the larger meetings. None might bring arms to the placita,[3] which are thus to be distinguished from the military assemblies of the county.

The count's justice is expected to be sufficient for the county ordinarily. Appeal lies from his court to that of the missus[4] and to the royal palace;[5] but appeals are discouraged.[6] Cases between two counts or a count and a bishop go before the king,[7] but royal vassals are judged before the count.[8] Criminal cases and those dealing with land or status[9] come before him. He can condemn to death and banish;[10] he exacts the *fredum* and the *faidam*,[11] the king's ban, and his own ban, which varies according to his law.[12] The count controls the giving of evidence to some extent. He has the royal privilege of holding an inquest,[13] and there are traces of this in the

[1] 789. 61, 81; 813. 174, 15, etc.
[2] 811/13. 177, 8.
[3] 803/13. 156, 1.
[4] M. Beauchet and M. Glasson hold this opinion, Waitz and Sohm the contrary. See 810. 155, 3; 802. 92, 1.
[5] 819. 289, 1; 797. 71, 4. The king has immediate jurisdiction over those in his *mund*.
[6] 755. 32, 7; 781. 190, 2. "Ut unusquisque clamator tertiam vicem ad comitem suum se proclamet . . . et si . . . antea ad palacium se proclamaverit legem suum componat." Contrast, however, the free access of the Saxon capitulary. 775/90. 70, 26; 829. II. 16, 14.
[7] 811/13. 176, 2.
[8] 781 ? 191, 13. See below, Chapter IV.
[9] 810. 153, 3, etc. Form. I. Sen. 20; II. Sen. 1, 2, 3, 4, 5, 6.
[10] 820. 296, 4, 5; 822. 318, 4. The account of the *majores causae* for which the count has competence probably applies only in the Spanish Mark.
[11] 818, 282, 9; 818. 284, 13. Form. Sal. Bign. 8, 9; Sal. Lind. 19. 815. 262, 2. The count can issue a land charter to replace a lost original. Form. I. Sen. 38.
[12] 790. 70, 31; 802. 104, 57; 803. 113, 2; paid for resisting a count who pursues a thief into an immunity.
[13] 820. 295, 1; 822. 318, 3; 829. II. 8.

Diplomata. He administers the oath to witnesses, and is expected to reject unworthy ones.[1]

The count has rights of jurisdiction even in the case of the immunities which lie within his county. The grant of an immunity always expressly forbids the count or his *iuniores* to enter the immunity to hold pleas or do justice or exact *freda;* but the count has a right and is commanded to enter the immunity in pursuit of thieves who have committed theft outside; whilst cases arising between an inhabitant of an immunity and a *pagensis* from without come before the count.[2] There are instances also in the Diplomata of an advocate of an immunity seeking justice—usually on a question of land ownership —before the count in the pagus.[3]

(*d*) *The Count's Subordinates.*

The count has thus full judicial powers in the county;[4] but he is not the only judge in the county. Reference has been made before to his *iuniores;* the *vicarii*, *centenarii*, *missi* and other lesser officials. Whatever their historical origins may have been, their position of dependence on the count is clearly marked in the Carolingian period. They are described as "the count's."[5] There is a formula of doubtful date, certainly anterior to the reign of Lewis the Pious, which contains the charge of the count to his vicarius, and speaks of the "office which we have committed to you."[6]

[1] 801. 210, 12; 781/6. 193, 8; 811/13. 176, 3; 822. 317, 6.

[2] See below, Chapter V. [3] Mühlbacher, *D. K.*, p. 189 (781).

[4] The count has justice not only over those who live in the pagus, but also over those who have lands, proprietary or beneficiary, within it. A man must seek justice concerning his paternal heritage or his liberty in his own pagus. 816. 268, 2; 818/9. 283, 10.

[5] 808. 138, 6; "comitis ministeriales." 829. II. 17, 15; 801/14. 144, 4. Form. Sal. Merk. 51. 822/3. 319. 12; 822/4. 302, 5; 826. 310. There are signs that the powers of the centenarius are being cut down. His judicial limitations are probably new. 806/10. 210, 14.

[6] Form. Sal. Merk. 51. Indiculum de comite ad vicarium. "Dilecto fidele nostro ego ille comis. Cognuscas, quia mandamus tibi de tuo

The positions of the vicarius and the centenarius have been much discussed, but an examination of the passages in the capitularies where they are mentioned makes it almost certain that the two were identical in the Carolingian period.[1]

M. Glasson [2] is the latest writer of the contrary opinion, but his arguments are not convincing. Waitz identifies the vicarius with the *vicecomes*,[3] a name that is hardly met with before the death of Lewis the Pious. It is probable that the use of the names varied locally.

The vicarius or centenarius is at the head of the subdivision of the county known as the *vicaria* or *centena*. He holds placita [4] and has judicial power. M. Viollet suggests that he may also have military powers, for the military force appears to assemble by centenae, and the centenarius may countenance a man's neglect of the host.[5]

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ministerio, quod tibi commendavimus bonum certamen exinde habeas. . . . Domnus rex ille nobis commendavit, ut iustitias vel drictum in nostro ministerio facere debeamus. Propterea has litteras ad te dirigimus, ut in nostro comitatu vel in tuo ministerio . . . iustitias . . . sic inquiras et facias, quasi ego ipse, . . . et nullum honorem nec nulla blandia propter hoc accipere non facias . . . . Taliter exinde certamen age, qualiter gratia nostra vellis habere." Sohm explains *quasi ego ipse* to mean "as impartially as myself," Waitz, "with equal powers to mine." Note, however, that the *ministerium* of the vicarius is distinguished from the comitatus, and is probably a smaller district.

[1] Both are described as "comitis." 826. 310; 808. 137, 3. Both are removable by the missi dominici. 805. 124, 12. All men are exhorted to appoint good centenarii, 809. 149, 11, and to remove bad vicarii. 801/14. 144, 3. Both are to know the law. 801/14. 144, 4; 802/13. 147, 3. The judicial powers of both have the same limits. 810. 154, 15; 811/13. 176, 4; 801/10. 210, 14; 810. 153, 3. There is, in fact, hardly a statement about one that is not found in connection with the other also.

[2] Glasson, II. p. 476–9. He admits that the vicaria = the centena, and gives no proof of the difference of function between the two officials. His arguments are based (1) on the existence of the two names; (2) on the evidence of the Merovingian period.

[3] Waitz, III. p. 398. [4] 819. 290, 14; 1. 214, 4; 829. II. 19, 5.

[5] 808. 138, 7. See below, Chapter VI.

His judicial powers are limited; cases concerning land, life or liberty cannot be completed before him.[1] There is evidence, however, that this theoretical distinction was not invariably preserved, and that questions of land and liberty were terminated by the vicarius,[2] whilst the capitularies command him to have a gallows.[3] In several of the formulae the vicarius is found sitting with the count or apparently in his stead;[4] in others he executes the count's judgment.[5] Probably these, with the *Indiculum* quoted above, refer rather to an earlier period, when the vicarius acted as the count's deputy, somewhat like the vicecomes of the later period.[6]

Beyond the difference of competence, it is difficult clearly to trace the relations of the placita of the count and the centenarius. According to Sohm's theory there was no court of the pagus at all, but the court of the centena was competent for the whole county. These *placita majora*—"echte Dinge"—were held yearly in each centena of each county by the count, and the lesser placita were as a rule held by the centenarius. This theory appears to have been accepted by the majority of historians. Waitz[7] believes that there was a court of the comitatus, but does not clearly indicate the relations of this court to that of the centenarius. M. Beauchet[8] has proved the existence of a court for the whole county district from the court of the centena, but has not cleared

[1] See passages quoted above. Also 814/40. 315, 3; Cf. 855. II. 89, 2. A case is terminated at the third of three placita. "Inter placitum vero et placitum sint XV dies, tertium autem quando comes placitum habuerit." The preliminary steps might be taken before the centenarius; the final judgment can only be given before the count.

[2] Form. Sal. Merk. 30.

[3] 801/13. 171, 11.

[4] Form. Sal. Bign. 7.

[5] Form. Sal. Merk. 29; II. Sen. 1, 3, 6.

[6] It is quite possible that the count would appoint the centenarius to this position, and that the identity of the two names was thus brought about.

[7] Waitz, IV. p. 369 ff.

[8] Beauchet, p. 131 ff.

up all the difficulties of the question. One of his most forcible arguments against Sohm's theory is based on the well-established custom of holding one of three annual placita majora in the week after the Easter octave.[1] These placita must last three days, and neighbouring counts are required not to hold them on the same day,[2] so that those who own land in two counties may be able to attend the placita in both. It is obvious that all these conditions could not possibly be fulfilled if the count held his placitum majus in each of the four or more centenae of his county.

In one passage the placita of the centenarius are apparently identified with the minora placita of the pagus.[3] It is possible perhaps to accept a modified form of Sohm's theory, and to hold that the lesser placita, though held in all the centenae in turn (or out of turn)[4] are competent for the whole pagus; that the centenarius usually presides at them, so that they are called his placita, but that the count can, and sometimes does, preside at them.[5] The greater placita must be held, as we have seen, at a fixed place; and three only need be held yearly in the pagus. This suggestion does not meet all the difficulties of the case,[6] but it must be remembered that the date of Charles's

[1] 853. II. 269, 8. Beauchet, p. 139.

[2] 864. II. 324, 32.

[3] "Constitutio genitoris nostri penitus observanda est, ut . . . in anno tria solummodo generalia placita observent . . . . Ad caetera, vero, quae centenarii tenent, non alius venire jubeantur nisi qui aut litigat aut iudicat aut testificatur." 819. 290, 14. Re-enacted, 819. II. 19, 5.

[4] One of the abuses of power on the count's part is the holding of placita in the same place time after time.

[5] 821. 301, 5; 816. 270, 3; 818. 284, 14.

[6] Another possible solution is the existence of two kinds of court for the centena as for the pagus. Thus the *generalem placitum* of I. 214, 4 could refer to the greater placitum of the centena; whilst in 818. 290, 4 *quae centenarii tenent* might refer to the first sentence as well as the second, the comma after *vero* being omitted. The count and the centenarius alike are exhorted not to hold placita too often. 816. 270, 3; 829. II. 19, 5.

organization of the scabini and regulation of the number of greater placita is not known, whilst the passage [1] that in some ways presents most difficulties is undated.

Besides the vicarius and the centenarius the count has other subordinates. As has been pointed out, he is of necessity absent from his county when he leads out the military forces, and also if he goes to the palace on any errand. A capitulary of 808 authorizes the count to leave two men behind when he goes to the host, "propter ministerium eius custodiendum." [2] In these M. Beauchet [3] sees the origin of the *vicecomes*, who is only mentioned once by that name in the capitularies [4] before the death of Lewis, and then in a doubtful passage. There is, however, frequent mention of the count's *missus*,[5] appointed by him for various purposes, and it seems possible that he delegated his power to some person or persons in his absence. Waitz, as we have seen, could identify this delegate with the vicarius, M. Glasson [6] and M. Beauchet with the vicecomes.

Professor Sickel [7] points out that the limitation by Charles of the judicial powers of the centenarius threw more work on the shoulders of the count, whilst at the same time the growing custom of holding more than one county also involved the need of more assistance. Thus the custom of appointing a substitute of equal powers with the count's arose. The tendency was most marked in the west and south, and operated rapidly between the reigns of Charles the Great and Charles the Bald. The distinction of the vicecomes from the centen-

[1] I. 214, 4. "Centenarii generalem placitum frequentius non habent propter pauperis; . . . ut hi pauperes qui nullam causam ibidem non habeant non cogantur in placitum venire nisi bis aut ter in anno."

[2] 808. 137, 4. [3] Beauchet, p. 192. [4] 789/814 ? 185, 3.

[5] 816. 262, 5; 829. II. 9; 781/6. 193, 10; 810. 153, 2; Cf. 779. 51, 19.

[6] Glasson II. p. 468 ff. [7] Die Vicecomität (1907), pp. 3, 5.

arius is that his power may extend throughout the county, whilst that of the centenarius is confined to the centena. The centenarius, again, is a public official, whilst the vicecomes, as Professor Sickel is careful to show, is appointed by the count and is hardly recognized by the capitularies at all.[1] It is a private matter that concerns the count himself; it is his right, not his duty, to appoint an assistant; but, once appointed, the vicecomes has the same powers as the count in the district, whether a whole county or a part of it, over which he is set. It is quite possible that the count occasionally made a centenarius his vicegerent in his absence.[2] From being a temporary appointment the office probably came to be held for life, and at a later date it becomes hereditary.

(*e*) *Popular Control.*

So far the administration has been represented as dependent in theory solely on the king; if not directly, at least through the count. The principle of popular control, however, is still recognized. The witness of the *pagenses* is mentioned in the Diplomata which record discussions of land ownership,[3] and the presence of the *rachiniburgi*, *boni homines*, *scabini* is also mentioned.[4] These attend the minora placita [5] in place of the larger public, who now find attendance a burden and not a privilege. The name *scabini* is not found in the capitularies till 803,[6] but it occurs much earlier in the

[1] 844. II. 259, 5. The Spaniards of the mark may choose for their lord count, vicecomes or vicarius. 884. II. 374, 9. The count tells his vicecomes and his centenarii and vicarii to support the Church. 864. II. 315, 14. The vicecomes assists the count at the mint.

[2] Professor Sickel quotes an instance for 935.

[3] Mühlbacher, *D. K.*, p. 243 (797). "Inventum est . . . per O. episcopum, et alios veraces homines inter patriam habitantes." (*Patria* = pagus.)

[4] *Ibid.*, p. 273, 201.

[5] 809. 148, 5; 801/10. 210, 14. They are not needed at the "echte Dinge." Waitz, IV. p. 398.

[6] 803. 112; 803, 115, 3.

Diplomata.[1] Probably the name was used popularly as an alternative for *rachiniburgi* about this period,[2] but by the time of Lewis the name *scabini* was established. Their business at the placita is to declare the law;[3] the count's sentence results from that. Thus the judgment is called theirs—"postquam scabini eum diiudicaverunt, non est licentia comitis vel vicarii ei vitam concedere."[4] The same fact stands out clearly in the Diplomata. The scabini are essential to the count's tribunal; without them no judgment can be given.[5] They are probably attached to the county, not to the centena, for they are called the count's scabini and are not mentioned in connection with the centenarius.[6] They are either appointed by the missi dominici or, like the vicarii and centenarii, "cum comite et populo": that is, probably, nominated by the count and approved by the pagus at the placitum.[7]

Thus the popular control[8] on the administration of justice might appear to be effective. It is to be noted, however, that it is the count who is held responsible for just judging;[9] that he, no less than are the scabini, is

[1] Mühlbacher, *D. K.*, p. 189 (781), 201 (782), 243 (797).

[2] Note Form. And. 50; Sal. Bign. 7, 27; Sal. Merk. 16, 18, 27, 28; Sal. Lind. 19, 21.

[3] 809. 148, 1. "In testimonio non suscipiatur nec inter scabinos legem iudicandum locum non teneat." Cf. Form. Sal. Lind. 21.

[4] 801/13, 172, 13.

[5] 821. 301, 5; Cf. 809. 150, 13; 823. 320, 2, etc.

[6] 789/814. 185, 1; 826. 310; 803. 112. Note also Form. Sal. Lind. 19. "Scabini, pagenses scilicet loci illius." Mühlbacher, *D. K.*, p. 201 "Scabinis Moslinses."

[7] 809. 151, 22. *Scabini* is omitted in some MSS. 803. 115, 3. "Ut missi nostri . . . scabinios elegant." Apparently they hold office for life and are removable for bad conduct. 829. II. 15, 4.

[8] The judgment of the *convicini* in Saxony (797. 71, 4) and in the Spanish Mark (815. 262, 2; 844. II. 259, 3) appears to belong to a state of things that has not yet been brought into conformity with the general governmental system.

[9] The references to bribery and to just judgment given above could hardly apply to a powerless president.

expected to know the law.[1] His powerful position in the county, moreover, makes it probable that he was able in many instances to impose his will on the people in matters of election, and to modify the judgment of the scabini in matters of justice.

Theodulf's description of a tribunal[2] minimizes the power of the people. In drawing any inference from it, however, it must be remembered that its date is prior to the reorganization of the missi and of the judicial system, which took place about 802; and that the description applies to the tribunal of the missi dominici, not to the count's. The record of the placitum at Istria,[3] where the popular voice is loudly heard, may be set in the opposite scale.

The scabini appear not only in the count's placita, but also in those held by the missi dominici.[4] If the pagus is weak in opposing the count, it has a chance of appeal to the king directly, or of a complaint at the assembly held by the missi. In the system of Charles the Great the missi formed an essential link between the central and local government. The institution was designed to correct the manifest evils of the growing independence of the count. But as the count's powers were abused, so were those of the missus. Again, the systematic visitation of the various regions into which the country was divided for the purpose was likely to be soon discontinued in times of civil disorder.[5] Neither the organization itself nor the individuals who formed a part of it were fitted to fulfil their functions effectively even throughout the reign

[1] 802. 147, 3; 801. 144, 4.

[2] Paraenesis ad judices (798), lines 425 ff. M. G. H. Poetarum Latinorum Medii Aevi, Tom. I. Pars I. p. 504.

[3] Waitz, III. p. 488 ff. [4] 820. 295, 2; 826. 310.

[5] The breakdown of the system of Missi Dominici is well described by J. W. Thompson, *University of Chicago Decennial Publications*, vol. iv., 1903.

of Lewis the Pious. Thus the chief instrument of royal control fell into disuse, and feudal tendencies were given free space to develop along the lines which, as we have seen, are clearly traceable under Charles and Lewis.

2. *The Comitatus*, 840–887.

So far the system has been described as it operated. Theoretically the system seems to have been little altered in the later period; practically it was being modified beyond recovery. One sign of the change is the silence of the capitularies with regard to the lesser officials. There are not half a dozen references to the vicarius and centenarius [1] in all the capitularies for all the kingdoms in the period 840–887. The scabini are barely mentioned. The central government is not now concerned, to the same degree as at an earlier date, that justice be strictly enforced and that good officials be appointed.

As regards the count himself, we see him exercising the same functions as before, but his position is altering. The tendencies of the earlier period are becoming pronounced. The capitulary of Quierzy,[2] as has been shown repeatedly, did not make him hereditary; but it is none the less true that it implies that the descent of the county from father to son is the usual practice. Fustel de Coulanges [3] quotes instances which show that while a countship might be granted to the son of a count, it was as a rule not the one that his father had held. M. Poupardin [4]

[1] Only one of these has any importance. In 853. II. 274 is given a copy of an oath to be taken by a centenarius. "Ego ille adsalituram quod *scach* (open robbery), vocant vel *tesceiam* (secret theft) non faciam nec consentiam, et si sapuero, non celabo . . . et de Francis hominibus in isto comitatu et in meo ministerio commanentibus nullum recelabo, quantum recordari potuero, ut per brevem vobis missis dominicis non manifestem." This formula may be compared with the oath taken by the twelve senior thegns of III. Atr. 3.

[2] 877. II. 358, 9.

[3] *Transformations de la royauté*, p. 426.

[4] Les grandes familles comtales a l'époque Carolingienne, *R. H.* vol. 72, pp. 72–95.

also shows that there were certain great families who almost monopolized the office of count before the dynastic tie finally gave way to the local tie.

Under Charles and Lewis the Pious the vassalization of the count had been proceeding. The tendencies of the earlier years are clearly developing in the period 840–887, though still slowly. The count himself is frequently a royal vassal, holding a benefice from the king. His underlings are becoming his vassals, probably holding lands from him; and they in their turn have vassals under them.[1] His justice is approximating to that of other lords—bishops, abbots and royal vassals.[2] He, like the king's other lieges, is exhorted to live of his own and not to oppress his neighbours.[3] He, like other great men, may have a private chaplain.[4] His benefices extend into other counties beside his own.[5] Although his theoretical position is unchanged and he still exacts the oath of fealty to the king [6] and maintains order generally, practically his position is much modified.

The change is due as much to the environment as to alterations in the office itself. The disorder of the times is reflected in the capitularies. The count is commanded to support the king in case of a conspiracy [7]—not the *collectae* or *gildoniae* of slaves which threatened the peace of Charles the Great's rule, but unions of disaffected magnates. He may have to face local disorder—*werra*—and cope with it on his own responsibility, only sending to the king when it grows beyond his power.[8] He is ordered to destroy castles erected without royal permission.[9] On the other hand, the development of legitimate spheres

[1] 844. II. 259, 5.
[2] 869. II. 337, 2. All of these alike are enjoined to do such justice to their vassals as was owed them from of old.
[3] 853. II. 76, 5. [4] 845/50. II. 81, 3. [5] 864. II. 319, 22.
[6] 873. II. 345, 5. [7] 865. II. 331, 13. [8] 877. II. 360, 19.
[9] 864. II. 328, 1.

of influence that rival his own is distinctly traceable. The earlier capitularies had emphasized the right of the count to enter the immunities in pursuit of runaway criminals; these rather lay stress on the privileges of the immunity and the count's duty of observing it.[1] Again, the rights of the *vassi dominici* are developing at the expense of the count's judicial powers. They can claim trial before the king, and can refuse to acknowledge the count's jurisdiction.[2]

It is possible that the rapidity of this change in the national organization has been exaggerated. If the capitularies appear to indicate a dissolvent frame of government, a growth of local independence, and a development of rival powers alongside that of the officials, there are also apparently indications that the ordinary round of administration proceeded as in the earlier period. The regulations as to the mints[3] indicate a close connection between the palace and the county. The rules as to the holding of placita[4] are numerous and more definite, in some respects, than the earlier ones. Yet even these provoke the suspicion that the old traditional system was breaking down and needed reinforcement. The frequent exactions of the general oath of fealty[5] may bear the same interpretation. The failure of the system of the *missi dominici* stands evident in one passage where these officials are ordered to refer to the count whatever they have had no time to accomplish during

[1] The bishop is to report the count's breach of an immunity. 864. II. 312, 1.

[2] See below, Chapter IV.

[3] 864. II. 315, 14; 864. II. 317, 17; 864. II. 320, 23.

[4] Several of the passages quoted above belong to this period. 853. II. 89, 2; sets the interval of a fortnight for the ordinary placita. See also 853. II. 269, 8; 845. II. 420, 79; 864. II. 324, 32; 857. II. 286, 2; 857. II. 294.

[5] 853. II. 272, 4; 854. II. 278, 13; 865. II. 330, 2; 873. II. 344, 4; 873. II. 342.

their rounds, and report to the king, who will see that the counts fulfil their duty.[1] The futility of this regulation is seen when it is remembered that the chief function of the missi was to be a check on the counts, and that they were supposed to be the chief if not the only vehicle of royal control.

Speaking broadly, then, it may be said that the chief significance of the later period is to be found outside the county organization. The changes coming over the position of the count and his subordinates are so largely attributable to seignorial developments both within and without, that a study of these by themselves is necessary. The count, although theoretically supreme in judicial, administrative and military powers, is in reality restricted in all these fields by rivals, many of whom can show as good royal warrant for their rights and powers as he can. By the side of the count are the royal vassal and the immunist; the holders of royal benefices and of royal privileges have an authority almost equal to that of the holder of royal office.

3. *The Shire to* 871.

The extreme scantiness of the sources for early English institutional history makes it difficult not to overestimate the importance both of allusions and of omissions in the documents that remain. The most that can be done is to state the evidence and attempt to construct a working hypothesis. Such an attempt will be made in the case of the kingdoms of Kent, Mercia and Wessex in the seventh and eighth centuries, as it is to the codes of Æthelberht, Offa and Ine that Alfred's introduction refers.

(*a*) *Kent.*

In the Kentish laws the predominance of the king is traceable throughout. His offices and his privileges

[1] 865. II. 331, 12.

are constantly mentioned,[1] and the laws are promulgated by his sole authority [2] in the case of Æthelberht and Hlothhære; and when in Wihtræd's laws [3] reference is made to the co-operation of others, it is no official nobility, such as Ine's ealdormen, which gives counsel and consent, but merely *eadigan*.

The king's *wic gerefa*, who witnesses the sale of cattle,[4] and may be required to act as oath helper in cases of vouching to warranty in the king's hall,[5] appears to have no independent jurisdiction. The gerefa of Wihtræd's laws seems to be part steward, part judge, exercising a purely domestic jurisdiction.[6]

In the laws of Hlothhære and Eadric, mention is made of *deman* who are present at a *methel* or *thing*, and prescribe right to men.[7] It is quite possible that these are the dooms-men who declare the law, and thus have much in common with the Merovingian *rachiniburgi*.[8]

Whilst the charters attributed to Æthelberht are "impudent forgeries," [9] some information as to official ranks may be obtained from the charters of Eadberht (738–765). These are witnessed by *comites* and *praefecti* and by one *princeps*. *Comes* may be taken as a translation of *gesith*, and thus corresponds with the mention of the gesithcund man in Wihtræd's laws. *Praefectus*, which is often translated *gerefa*, may well bear that meaning here.[10]

[1] Abt. 5, 7, 8. Hl. 7, 16.

[2] "These are the dooms that King Æthelberht established." "These are the dooms that Hlothhære and Eadric, kings of Kent, established."

[3] Wi. prol. Wi. 5, however, refers to the *gemot* at which apparently the laws were framed. The signatures of the few genuine charters of Wihtræd afford no help in determining the composition of such a *gemot*.

[4] Hl. 16. [5] Hl. 7. [6] Wi. 22. [7] Hl. 8.

[8] *Dema* is found at a later period with the meaning of judge or president of a tribunal. See III. Eg. 3; Judex; Alfred's Bede.

[9] Kemble, II. p. 132.

[10] B. 194 (765) is signed by an Ecgbald who is "comes atque praefectus."

In the Kentish laws, then, there is no mention of any territorial division, large or small,[1] to guide us in estimating the importance of the assemblies at which justice is done and law declared.[2]

The king's gerefa who witnesses sales may preside at such assemblies, though the fact is nowhere stated. There is no sign of any nobility but one based on birth.

(*b*) *Mercia.*

For Mercia the evidence is even slighter than it is for Kent, as Offa's laws are not extant in an independent form. His charters, however, are numerous, and from these a hierarchy may be deduced. The charters are signed by *reguli*, *subreguli*, *duces*, *praefecti*, *comites*, *ministri* and one *patricius*. The *regulus* or *subregulus* who signs, is, as a rule, the lord of the Hwiccii; he grants charters himself, which are confirmed by Offa. A comparison of the names of the witnesses makes it clear that *dux* and *princeps* are equivalent titles. Of thirty-two signatories who bear one or the other title, twelve are called by either indifferently. Of the seven *praefecti*, three are also called *principes*. The *patricius* is also called *dux* and *princeps*. Only four *ministri* are mentioned. If *minister* is to be translated thegn, and *comes* gesith, there can be little doubt that the *dux* or *princeps* is the ealdorman. Mr. Chadwick[3] brings evidence to prove this. He is inclined to identify the *praefectus*, whose position is more doubtful, with the ealdorman also.[4]

No territorial description is annexed except in the case

[1] The king's *tun* and the *wic* are the only units mentioned.

[2] We may note, however, that the *methel* has its *frith* (Abt. 1), in this resembling the later folkmoot.

[3] Chadwick, pp. 329 ff. The Chronicle for 825 mentions five ealdormen of Mercia.

[4] The *miles* of Offa's earlier charters probably is the *comes* or *minister*.

of the *dux Suthsaxonum*, Oswald.[1] A diploma of 825 refers to the *swangerefan*, who have care of the woodlands, but no general administrative organization can be inferred from this.[2]

Thus, whilst the existence of a body of ealdormen under Offa is well attested, there is no evidence of any official duties or any special districts assigned to them. The position, however, of the ruler of the Hwiccii suggests an explanation for their origin.

(*c*) *Wessex.*

In the laws of Ine there are distinct traces of an official organization. The ealdormen who help to frame the laws[3] hold shires[4] or offices, which they may forfeit at the king's will for neglect of duty. Their official position is not less evident than their social distinction.[5] Again, the king's gerefa has duties connected with police organization; he receives the fine paid by those who have allowed a captured thief to escape.[6] This may still, however, be no more than the duty of a steward caring for his master's fiscal interests.

No particular district is mentioned in connection with the king's gerefa, but the *shire* to which the ealdorman appears to be attached[7] has evidently a territorial significance.[8] It appears to be a definite district over which the king has set the ealdorman. Whether the name attaches to his district alone is not certain; *scirman* in Ine 8[9] may mean "ealdorman," or merely "official," with *scir* used in the original sense of "office." The shireman is, however, a judge before whom right is claimed; there is an official judicial system.

[1] B. 208. [2] B. 386. [3] Ine, prol.
[4] Ine, 36. [5] Ine, 6, 2, 3. [6] Ine, 73.
[7] Ine, 36, 1. "If he be an ealdorman let him lose his shire."
[8] Ine, 39. "If any man leave his lord without permission, or steal himself away into another shire."
[9] "If any man claim his right before a *scirman* or any other judge [19] (*dema*).

Of the existence of the territorial shire the earliest evidence is probably that of the Chronicle, which mentions the district of Hampshire in 755, and the men of Wiltshire in 800. Here, again, the connection of the ealdorman with the shire is to be noted.[1] From 845 onwards there is ample evidence for the shire system in the Chronicle.[2]

The king's gerefa also is mentioned in the Chronicle. When the ships of the Northmen appeared in 787 the king's gerefa attempted to make them come to the king's *tun* at Dorchester, taking them for merchants. From this, and from other indications, Mr. Chadwick would deduce the organization of local government by king's *tuns*, each having a jurisdiction extending some distance around it.[3] There is, at least, no reason to associate the gerefa with the ealdorman's shire.

In a charter of 824 [4] Egbert books land to his gerefa—"praefecto meo"—and the deed is witnessed by five other *praefecti*. This appears to establish the translation *praefectus* for *gerefa* for Wessex at this period. Of the various signatories of Egbert's charters eighteen are *duces*, four of these being *praefecti* first; ten are *praefecti*; eighteen are *ministri*. Under Æthelwulf nineteen *duces* sign, only a few of whom bear the same names as Egbert's *duces*; and besides nineteen *ministri*, there are ten *milites*.

The early West Saxon administration thus appears to include a definite territorial organization, with which special officials are connected. The duties of the gerefa are, perhaps, more clearly indicated than in the other kingdoms; but it is in the shire system that the essential difference of Wessex from the other kingdoms appears

[1] "The ealdorman, Weohstan, met him with the Wiltshire men."
[2] See under years 845, 851, 860, etc.
[3] Chadwick, pp. 215 ff.
[4] B. 377.

to lie. If its origin is to be traced in the formation of separate territories to endow the members of the royal family,[1] whilst the ealdormen of Mercia represent the former rulers of conquered kingdoms, this may to some extent explain the eventual prevalence of the shire system. The ealdormanries of East and West Kent, however, appear to be derived from a former double kingdom.

There is no mention of any *gemot* or assembly at which the shireman or any other judge presides. The existence of such can only be conjectured by analogy or in the light of later developments.

4. *The Shire*, 871–925.

The contrast between the English and Frankish systems of administration is immediately evident when a comparison is attempted. Whilst the count, as has been said, is the backbone of the system in Francia, the ealdorman is of no such essential importance in Wessex. No orderly hierarchy of officials can be constructed from the data we possess. On the other hand, the shire forms a definite unit in relation to which the officials may be studied. In describing the local government of Wessex under Alfred and Edward, and in comparing it with that of the Carolingian system, the districts will first be discussed; next, the officials and their relations to each other; and, lastly, their relation to the central government.

(*a*) *The District.*

The shire, so briefly mentioned in Ine's laws, appears in full working order for military purposes in the Chronicle of the ninth and tenth centuries.[2] The struggle

[1] Chadwick, pp. 284 ff.

[2] See below, Chapter VI. In the Chronicle 755–891 all the shires south of the Thames are mentioned; 755 Hampshire, 800 Wiltshire, 837 Dorset, 851 Devonshire, 860 Berkshire, 878 Somersetshire, 891 Cornwall.

with the Northmen is carried on in a series of local efforts, each shire in turn coming out against them under its ealdorman. On the other hand, there is but one reference to the shire in Alfred's laws,[1] and none in those of Edward. The laws of Ine, however, form an integral part of Alfred's code, and the small number of references is to some extent explained by this.

These passages, however, make several facts clear. The division into shires, as into *pagi*, is comprehensive; every man must be in one such district. For leaving a shire a man must have the witness of its ealdorman, and if such leave is not obtained a fine is due in each of the two shires in question. Thus the shire, like the pagus, is a financial and political unit as well as a military unit.

It is also a judicial unit. The ealdorman is found presiding over a *gemot*[2] which, like the Kentish *methel*, has its own peace. This is in all probability the later shiremoot, which in some respects answers to the placitum of the comitatus in Francia.

At the outset the analogy thus appears close. The West Saxon shire corresponds in many ways to the Frankish pagus. The question of origin is the most doubtful. As parts of a working system both owe their form to the central government, but, apart from other evidence, the two names for the Frankish district indicate a popular as well as a royal origin,[3] whilst the word *shire*, with its original meaning of office, points to imposition of a system from above. It is in connection with the shire that there appears to be most evidence for deliberate innovation on the part of the crown.[4] Yet, as we have

[1] Af. 37; 37, 1.
[2] Af. 38; 38, 1.
[3] This is also suggested by the frequent use of *patria* for *pagus*.
[4] *Cf.* Mr. Chadwick's theory referred to above.

seen, traces of the system are found as early as Ine's reign, and its development is explicable without any theory of foreign influence.

The theory has been advanced that "the shire of the seventh century is the hundred of the tenth."[1] The author of this suggestion brings forward numerous proofs of the existence, during the eighth and ninth centuries, of a district smaller than the later shire; described in the charters as *regio*; and known in English, so he believes, as the shire. It is, perhaps, of no very great importance whether these districts bore the English name of shire; it is possible that its use had not yet become specialized. No traces, however, of any resemblance to the later shire[2] are to be found in these few references to the *regio*. When it is considered that the *regiones* cannot be identified with the hundreds,[3] as soon as their limits are traceable, even in Kent, from which Mr. Adams drew most of his examples, it will be seen that his formula has little value. It may be noted that it is in Kent that Mr. Chadwick finds the clearest traces of the district smaller than the shire, that he believes was organized round the king's *tun* there.[4]

The existence of districts for taxation purposes is suggested by Mr. Corbett,[5] and by him traced back to a very early date and connected with the semi-mythical Bretwealda-ship. The evidence afforded by the Tribal Hidage, however, is too isolated and problematic to contribute much to the understanding of the administrative system in Wessex. A reference to a lesser district than the shire has, however, been traced in the

[1] Adams, *A. S. Law*, p. 19.
[2] The only official mentioned in connection with the *regio* is the gerefa, not the ealdorman.
[3] Stevenson, *E. H. R.* (1905), p. 350.
[4] Chadwick, pp. 249 ff.
[5] *Trans. R. Hist. Soc.* XIV. pp. 187 ff. (1900).

laws of Alfred himself. Dr. Liebermann [1] suggests that the *boldgetael* of Alfred 37 [2] is the unit which later came to be known as the hundred. He supports his theory by Ælfric's gloss—*getalu* for *centurias*.[3] Unsupported as the suggestion is by any other passage in the laws, it must stand as a conjecture only, but it is of too much interest to be ignored.

Whatever may be thought of these suggestions, the contrast between the ambiguous and hypothetical *regio*, hundred hides, or *boldgetael* of Wessex and the clear-cut *centena* or *vicaria* of Francia is striking.

(*b*) *The Officials.*

From the first appearance of the shire it is associated with the ealdorman. The ealdorman, like the count, is dependent on the king for his position.[4] His social dignity is well marked, no less than his official character.[5] He presides, as we have seen, at the folkmoot,[6] where he receives the *wite* due to the king,[7] and he has the power

[1] Gesetze der Angelsachsen, Wörterbuch. *Deutsche Literaturzeitung* (1905), 12, p. 736 (reviewing Chadwick).

[2] "If a man from one *boldgetael* wish to seek a lord in another *boldgetael*, let him do it with the witness of that ealdorman whom he before followed in his shire." The new *boldgetael* apparently lies in a different shire.

[3] Further evidence in favour of Dr. Liebermann's theory is afforded by the Alfredian version of Gregory's dialogues, where *boldgetael* appears three times as a translation of *provincia*. In one instance *scir* is an alternative rendering. Grein, *Angel-Sächische Prosa*, Vol. V. pp. 45, 185, 229. Professor Vinogradoff (*Growth of the Manor*, p. 250) accepts the theory, which accords well with Bede's reckoning by households. Professor Rietschel (*Zeitschrift der Savigny-Stiftung* (1907), p. 412, Germ. Abt.) adds the suggestion that *getael* has a definite numerical significance and that *bold* = hide. On the other hand, Frh. v. Schwerin (*Zeitschrift der Savigny-Stiftung* (1908), p. 290. Germ. Abt.) considers that the word means a group of holdings subject to one lord.

[4] Ine, 36, 1.

[5] The ealdorman's *burgbryce* is 80*s*. (Ine, 45) or 20*s*. (Af. 40), and his *fihtwite* 60*s*. (Ine, 6, 2) or 100*s*. (Af. 15). In each case he is equalled with the bishop. The penalty for breaking his *borh* is also equal to the bishop's (Af. 3). The will of the ealdorman Alfred refers to his double *wer* (B. 558).

[6] Af. 38, 1.

[7] Af. 37, 1.

to pervert justice.[1] He has the right to give the king counsel,[2] like the count, and like him has important military duties. His position is as yet strictly official, but tends, like the count's, to become hereditary.

The recompense that the ealdorman receives may be compared with that of the count. There are indications that as the count was in many cases paid with a benefice or with *comitatus pertinentia*, so there were lands specially attached to the ealdormanship.[3] From the passage in Alfred's law, which has been already quoted more than once, it appears that the ealdorman had some pecuniary interest in the king's *wite*, since half was to be paid in each shire.[4] Not till the twelfth century is it expressly declared that the earl has the third penny [5] of forfeiture in the shire, but the right recurs frequently in Domesday, and has evidently been long transferable.[6] Thus it does

[1] Ine, prol.

[2] Ine, prol. The ealdorman is here coupled with the other *witan*. The signatures to Alfred's charters indicate at once the position of the ealdorman at the national council, and the number of ealdormen at a given time. In the reign of Alfred (Mr. Chadwick's figures are given) twenty-three *comites* sign; under Edward nineteen, five being the same as Alfred's. It thus appears probable that there was an ealdorman to each shire in Alfred's reign, Kent having two. There are signs of a falling off in numbers under Edward, which Mr. Chadwick attributes to a temporary breakdown of the shire system.

[3] Kemble, II. p. 140, points out that the "ealdormonnes land" was a permanent landmark, frequently mentioned in the charter boundaries. I. As. prol. may refer to this official land in exhorting the ealdorman to pay the tithe first from his own land. Domesday refers to *mansiones de comitatu*, and the *Instituta Cnuti* (1103–1120) to *comitales villos qui pertinent ad comitatum eius* (In. Cn. III. 55).

[4] Af. 37, 1.

[5] E. Cf. 27, 2. "Comes comitatus qui tertium denarium habet de foris facturis." In. Cn. III. 55. "Tertius denarius in villis ubi mercatum conveniunt et in castigatione latronum." Dial. de Scacc. I. 17. "Comes est qui tertiam portionem eorum quae de placitis proveniunt in quolibet comitatu percipit . . . sed hii tantum . . . quibus regum munificentia . . . decernit."

[6] The third penny of the shire is the earl's in Yorkshire, Lincolnshire, Derbyshire and Nottinghamshire. The third penny of various boroughs is the earl's. The third penny of the shire occasionally (Dorset, Dd. I. 75. Warwickshire, Dd. I. 238), and more frequently of a hundred or hundreds

not seem an improbable supposition that from a very early date the ealdorman, and possibly other royal officials, had a third part of the judicial fines paid to the king. We have noticed traces of a similar custom in Francia. In both countries, however, the very fact that there are so few specific notices of the right suggests extreme antiquity of custom, and it is far more probable that it has a common origin in the two countries than that one borrowed from the other.

The ealdorman, again, appears to have the right of exacting services and dues. Reference is frequently made in the charters to *pastus principum* [1] as one of the burdens from which the land is freed. This can only mean the ealdorman's *feorm ;* the duty of giving him lodging and sustenance, which in Francia is known as *mansionaticus*. Other services are generally referred to in one charter [2] in such a manner as to suggest that the ealdorman had power to exact them, whether for his own ends or for the king.

The ealdorman's judicial duties are but slightly outlined as compared with those of the count. Beyond the fact that he has a position of dignity in the folkmoot and that he can exact *wite* for himself and for the king, there is scarcely any account of his judicial activity. Even at a later date his duties are the general ones of keeping peace and enforcing law,[3] no closer definition being given. The most detailed instance of his enforcement of order in Alfred's laws [4] is connected rather with his military than with his judicial powers. The man who

(Dd. I. 38b, 86b, 87b, 101, II. 294b) is annexed to a manor, often royal, sometimes comital. For the transferable nature of the right, note I. 280b. "Horum omnium nemo habere potuit terciam denarium comitis nisi eius concessu et hoc quamdiu viceret."

[1] B. 416, 443, 450, 454, 488, etc.

[2] B. 551. "Æghwelces þinges to freon ge wiþ cyning, ge wiþ ealdorman ge wiþ gerefan æghwelces þeodomes lytles oþþe micles."

[3] II. Atr. 6.

[4] Af. 42, 3.

cannot overcome his home-sitting foe is to ride to the ealdorman for help, and if the ealdorman fail him, to the king. The help given by the ealdorman would presumably take the form of armed assistance with some of the forces of the shire. Under Edgar we find that it is the ealdorman's duty to set forth the law in the shire-moot.[1] It was also the duty of the count to know and enforce the law, as the capitularies declare repeatedly. The count is also exhorted to appoint good subordinates or *iuniores;* and similarly the ealdorman has a *gingra,*[2] whom he appoints himself.[3] Of the position of this *gingra* we have practically no information, beyond the fact that his dignity is equal to that of a priest, unless he is to be identified with the *gerefa.*[4]

There are more traces of judicial activity on the part of the gerefa than on the part of the ealdorman. The gerefa, like the ealdorman, assists at legislation,[5] takes the wedd, or pledge of loyalty from his own shire[6]—a similar duty to that entrusted to the missi dominici in Francia. He pursues thieves[7] and has the custody of offenders during their imprisonment in the king's *tun.*[8] He exacts the *bot,*[9] which may be paid only in his presence,[10] and the *wite* on pain of paying the king's *oferhyrnesse* himself.[11] He is commanded to deem just dooms, to set a fixed term for cases and to declare folkright truly,[12] and he is forbidden to take bribes for the perversion of justice.[13] He has a limited *manung* or jurisdictional district.[14] He holds a gemot,[15] whereas the ealdorman is

[1] III. Eg. 5. [2] Af. 38, 2 [3] Judex, 8 (980–1050).
[4] See below, p. 51. [5] VI. As. prol. [6] VI. As. 10.
[7] VI. As. 8. [8] Af. 1, 3. [9] II. Ew. 2.
[10] I. Atr. 1, 14 (980–1013).
[11] V. As. 1, 2; cf. II. As. 25. [12] I. Ew. prol. I. Ew. 2. II. Ew. 8.
[13] V. As. 1, 3.
[14] V. As. 1, 5. VI. As. 8, 2. In VI. As. 8, 4 *manung* is used for the men of the district.
[15] II. Ew. 8.

only described as being present at one. He is a public official before whom debts are declared [1] and sales take place.[2] Merchants from a distance must make known to the king's gerefa at the folkmoot the men whom they bring with them, as often as new ones arrive.[3] The gerefa also controls the commendation of men to their lords.[4]

The gerefa holds a *gemot* every four weeks.[5] This, as has been frequently pointed out, is the interval at which the hundred court is later held. In only two passages to which reference has been made is the gerefa connected with the shire,[6] and these occur in the laws of Æthelstan. There appears no obstacle to the theory that the district over which the gerefa of this period presides is one smaller than the shire. The word gerefa in itself implies no special district; it is found in connection with the *port* and the *tun* and the *wic*, and only much later with the shire. It seems quite possible that the gerefa of Alfred and Edward administered the district that became known as the hundred.

It might seem that the gerefa is therefore to be paralleled with the centenarius. There is, however, one essential difference, a difference that is characteristic of the whole governmental system of the two countries. Whilst the centenarius is entirely dependent on the count—for the relic of popular election is little more than a form—the gerefa is pre-eminently the king's gerefa. Whilst

[1] Af. 22. [2] II. As. 10. [3] Af. 34.

[4] V. As. 1, 2. In this instance the gerefa appears to be stepping into the shoes of the ealdorman. Af. 37.

[5] II. Ew. 8.

[6] VI. As. 10. In VI. As. 8, 4, whilst the shire is described as the gerefa's, his *manung* is apparently distinct from it, and reference is also made to the *gerefscipas* of the two gerefan. The relation of the gerefa to the shire at this date is not clear from this passage (see below). *Scir* is undoubtedly used in the territorial sense, for when the forfeiture of office is mentioned, the word *folgoð* is employed. (VI. As. 11.)

the centenarius and vicarius are always "comitis iuniores," we hear nowhere of the "ealdorman's gerefa." Mr. Chadwick has brought forward good evidence for the derivation of the office from a stewardship over the royal estates,[1] and the use of the name in various other connections supports the theory. Whatever his origin, however, the dependence of the gerefa on the king is unmistakable. He is plainly placed in his office to defend the royal interests.[2] He is most frequently referred to as "the king's gerefa.[3] He is liable to lose his office through inefficiency.[4] "If any of you is neglectful and will not obey me, and will not take that *wedd* of those below him . . . then be that gerefa without his office and without my friendship, and let him pay me 120 shillings."

It appears, also, that the jurisdiction of the gerefa is superior to that of the centenarius, for he can do justice in questions of land, whether it be bookland or folkland,[5] whilst the centenarius, as we have seen, has no jurisdiction over cases of land, life or liberty. Such cases were later heard in the hundred, a fact which affords another reason for connecting the gerefa with the hundred.

There seems, therefore, no ground for identifying the ealdorman's *gingra* with the gerefa of Alfred's laws. Yet it is possible that the ealdorman, like the count, may have come to appoint subordinates. It has been sug-

[1] Chadwick, pp. 228 ff. There are several passages in the laws in which the name still bears this meaning. *E. g.* IV. Eg. 13, 1. In I. As. prol. the gerefan first mentioned are ordered to pay the tithe from the king's lands, and would therefore appear to be royal stewards; later in the passage the king's gerefan, coupled with his ealdormen, are ordered to pay tithe from their own lands, and would seem to be public officials. But the offices may well have been doubled.

[2] I. Atr. 1, 14. The gerefa of B. 591 confiscates land which is forfeit to the king.

[3] Ine. 73. Af. 1, 3. Af. 22. I. As. Prol. II. As. 25, etc.

[4] VI. As. II. 11. As. 25. [5] I. Ew. 2.

gested, and seems very probable, that the *gingran* of "judex" and the *iuniores* of the charters were a class of subordinates of the ealdorman, of whom the *scir gerefa* was one.[1] The breakdown of the shire system, if it may be so called, took the form of an aggregation of several shires in the hands of one ealdorman. Mr. Chadwick [2] shows that not more than six "comites" are to be traced contemporaneously as witnessing charters under Æthelstan. Thus it is possible that as the ealdormanries develop it becomes customary for the ealdorman to appoint a gerefa as his substitute in the shire, at first, it may be, temporarily, but later as a permanency. We have already noted two passages [3] in Æthelstan's laws where the gerefa is mentioned in connection with the shire, as well as with his own *gerefscype* or *manung*, and another [4] where he appears to be exercising a function that formerly belonged to the ealdorman. If this is the case there is a somewhat close analogy to the Frankish *vicecomitatus*.[5] The comes, as we have seen, frequently appoints his vicarius or centenarius to the office of vicecomes, and the necessity for a substitute often arises from the fact that the count holds several *comitatus*.

This theory [6] accounts for the rise of the *scirgerefa*,[7] and also perhaps for some of his later powers and privileges, such as the control of the military powers of the shire.[8] As the vicecomes was in all probability rewarded with

[1] Zinkeisen, *Pol. Sci. Quarterly* (1895), p. 139.
[2] Chadwick, p. 197.
[3] VI. As. 8, 4. VI. As. 10. [4] V. As. 1, 2.
[5] The *gingra* of Af. 38, 2 may be a temporary substitute parallel perhaps to the *comitis missus* of the capitularies.
[6] Chadwick, p. 231.
[7] Note the continued existence of the title *gerefa*. K. 840: "nan scyrgerefa oððe motgerefa ðar habban aeni socne oððe gemot." In Latin: "nullus vicecomes vel prepositus." The last word appears to mean gerefa of a hundred. The charter belongs to the Confessor's reign.
[8] Dd. I. 179.

land, so the later scirgerefa appears to have "reveland" [1] as an appendage to his office. These developments, however, probably belong to a later period.

The social position of the ealdorman is throughout superior to that of the gerefa. He is a great local landowner, in this resembling the count, and is concerned in many of the transactions recorded in the landbooks. Unlike the gerefa, he has a special *wer* and other privileges at law. His military duties are doubtless part cause and part effect of this superiority. The count, in common with other royal Frankish officials, has a threefold *wer*. Socially however, the position of the ealdorman seems almost more analogous to that of the dukes than to that of the counts of Francia, especially when the later great ealdormanries develop.[2]

Generally speaking, the contrast between the institutions of the two countries is one between elaboration and simplicity. The Frankish system is at once more complicated and more closely described. The judicial competence of the various courts is defined, if not so as to preclude discussion, at least with great fulness, as compared with that of the English *gemots*, whose relations only begin to be discernible under Edgar. The duties and positions of the various subordinates of the counts are indicated, and the co-operation of the people in the judgment of the courts, by means of the scabini and

[1] Dd. I. 179b; I. 69; I. 57b; I. 181. Cf. B. 412, in which the gerefa Abba refers to the land which he has received from his lords 833. Compare also the connection of the sheriff with the mint to that of the comes and vicecomes. Dd. I. 252.

[2] Perhaps the nearest parallel to the relation of the ealdorman and the scirgerefa is that of *Herzog* and *Pfalzgraf* under the Saxon and Salian emperors. The Pfalzgraf was in a sense a successor of the missus dominicus. He was appointed by the emperor to care for his interests. There was a Pfalzgraf to each duke, but his special functions are not easily definable. He tended to lose his individual characteristics, and become like any other count. Richter, *Annalen*, Vol. III. p. 734.

otherwise, is traceable. The doubtful nature of the relation in which the few West Saxon officials stand to each other has been indicated; of the popular judgment there is as yet no sign in the English laws.

(c) *Relations of the Officials to the Central Government.* The most striking difference between the official organization of the Frankish and West Saxon governments is to be found in the missi dominici of the Carolingians. This is due in great part to the difference in size of the two states. The occasion for such envoys would scarcely arise in the West Saxon kingdom, where a few days' journey would bring the king in touch with almost any part of his realm. The comprehensive control exercised by the missi dominici under Charles and Lewis has no corresponding feature in England. The passage in Asser from which the existence of such a system has been deduced [1] gives very little ground for such an interpretation.[2] It more probably describes the arbitration of the king on some case submitted to him in consequence of the law's delays, and it may be compared to the case recorded in one of the charters of Edward's reign. Here Alfred eventually sends back the case to the popular courts.[3] Royal control is so close, in fact, that there is no place for a system of missi dominici.

In both countries the officials are directly and ostensibly dependent on the king. In both countries local independence tends to grow out of the local omnipotence of the royal official; but in England the ealdorman's growth of power appears to follow on the temporary failure of

[1] This theory is found in Kemble, Pauli, Stubbs, Pollock and Plummer.

[2] Asser, c. 106. "Si aliquam in illis judiciis iniquitatem intelligere posset . . . illos ipsos iudices, aut per se ipsam, *aut per alios suos fideles quos libet* interrogabat, quare tam nequiter judicassent. . . . Quibus auditis verbis . . . comites et prepositi ad aequitatis discendae studium totis viribus se vertere nitebantur."

[3] B. 591.

the shire system, for the great lords of Æthelred's reign are rulers of many shires, not of one; whilst in Francia it is the institution of the missi that breaks down, and it is the consequent loosening of royal control, with other causes, that brings about the independence of the counts.

There are traces of appeal to the tribunal of the palace in Francia which cannot be directly paralleled in English documents. M. Beauchet[1] has shown that there is appeal from wrong judgment, as well as appeal for delay of judgment, whilst English law only knows the last type, which is, strictly speaking, not appeal at all.[2] Besides a number of cases on which the Witan decide [3] there are a few instances like that referred to above,[4] in which the royal arbitration is sought.[5] If the system is not so elaborate as in Francia, there is yet proof of an effective royal control in things judicial as well as administrative.

5. *The Shire*, 925–1034.

(*a*) *The Ealdorman.*

The change in the ealdorman's position is among the most striking and best-established facts of this period. The evidence of the charters bears out that of the Chronicle. By Æthelstan's reign, as has been said, there are apparently only six ealdormen, and the number remains low during the following reigns. Mr. Robertson [6] has shown that there grew up a great

[1] Beauchet, p. 320.

[2] Stevenson, Asser, p. 342. Adams, *A. S. Law*, pp. 24. ff.

[3] See cases quoted in *A. S. Law*, pp. 314–37.

[4] B. 591. K. 693.

[5] In several well-known passages men are forbidden to seek justice from the king till they have failed to obtain it in the ordinary courts. II. As. 3. III. Eg. 2. II. Cn. 17. Similar passages are to be found in the capitularies. 754/5. 32, 7. 829. II. 17, 14. Immediate appeal lay to the missi, both for delay of justice and for wrong judgment, and appeal to the king was only allowed if the missi failed to do justice. The capitularies are not altogether consistent on this point. Beauchet, pp. 329 ff.

[6] E. W. Robertson, *Historical Essays* (1872), pp. 177 ff.

clan of ealdormen, related amongst each other and connected with the royal family, and that shire was added to shire to form their great provinces. Even at this time the ealdormanship is hardly hereditary;[1] as with the Frankish countships, members of the same family hold office in different parts of the country, though the connection of the land and the family tends to strengthen. The ealdorman's position is thus considerably modified, but there are signs that the shire system is still operative for judicial purposes.

(*b*) *The Shiremoot.*

The first mention of the shiremoot by name occurs in III. Edgar, 5, 1. In this well-known passage it is commanded that the *hundredgemot* be held as before fixed, and the *burhgemot* thrice a year, and the *scirgemot* twice a year. From the mention of the ealdorman's presence it seems probable that the shiremoot is to be identified with the folkmoot of Alfred's and Æthelstan's laws whenever it is mentioned in connection with an ealdorman. The compiler of the Leges Henrici identifies the *gemot* of II. As. 20 with the shiremoot;[2] and from this passage we gather that seven days' notice of each meeting must be given, and that a fine is exacted for repeated failure to attend the gemot.[3] The bishop and the ealdorman are present at the shiremoot and declare God's law and secular law.[4]

From the mention of the fine for non-attendance, as well as from the provision of Æthelstan's and Edgar's laws for enforcing attendance,[5] it might be inferred that suit to the shire court was compulsory on all. Indications, however, have been found that attendance was not compulsory at every meeting alike. After the Conquest

[1] Chadwick, pp. 292 ff.
[2] Hn. 51.
[3] II. As. 20. 20, 1. Cf. III. Eg. 7. and Dd. I. 269b. Ten shillings
[4] III. Eg. 5, 2.
[5] III. Eg. 7, re-enacted II. Cn. 5.

the county court is found sitting twice a year in some records, twelve times a year in others; and for a long time two half-yearly meetings of the county court are distinguished as "the great counties" from the ordinary monthly meetings.[1] The necessity for meeting oftener than twice a year would lie, as in Francia, in the amount of routine procedure that was involved in carrying through any case. It is not probable, nor do the sources appear to indicate, that procedure was less complicated at an earlier date than it was at those for which we have information.[2] It is very likely, then, that whilst there were two great meetings of the shiremoot every year, at which all men of the shire had to be present, there were also other meetings in between for necessary judicial business, to which those only need come who had a case to pursue or who were summoned by the presiding official. If this were so, the analogy to the *placitum majus* and *placitum minus* of the *comitatus* would be obvious. It is impossible to speak with certainty for lack of material, but it is quite conceivable that Edgar's regulation is parallel to that lost capitulary of Charles the Great,[3] in which he declares that all men should come to three placita in the year, and to others when they are summoned. There is, however, so far as can be seen, no transference of the duty of attendance to a small body of men like the Frankish scabini. It is not till a later date that this duty begins to be specialized, and then it appears to be real, not a personal burden.[4]

We are thus brought to the question of popular control.

[1] P. and M. I. p. 526.

[2] On the other hand, there was probably far less business in the shiremoot before the Conquest, the hundred moot disposing of the ordinary judicial work.

[3] Referred to in 801/10. 210, 14. "Illa tria placita quae instituta sunt."

[4] P. and M. pp. 527 ff. But note the *judices et juratores* of Yorkshire. Pipe Roll H. I. 31. Cf. Vinogradoff, *Growth of the Manor*, pp. 197 ff.

The theory of it, as we have seen,[1] was present in the Carolingian period, but the extent to which it proved a real check on official power is very dubious.[2] The capitularies as a whole certainly appear to indicate the supreme power of the count at his tribunal, yet it is stated that he cannot act contrary to the judgment of the scabini.[3] It seems probable, however, that he or the missi have a leading part in appointing the scabini, who can hardly be described as merely popular representatives. The scabini, however, only exercise their functions in the *placita minora;* at the general placitum the popular voice has possibly more weight. In any case, however, there is more evidence for the efficacy of popular control in the English courts. There are records of cases in Edgar's reign [4] in which it is clear that the judgment is given as that of the whole shire. There is probably specialization of function here also: the *witan* of K. 693 may be, like the scabini, men especially learned in the law; but there is a wide difference between such inevitable precedence and the legalized representation of the scabini. Moreover, the records of the Norman period show that this procedure still persists in its full vigour.[5]

The shiremoot, like the count's placitum, is not merely a judicial tribunal, but also a public assembly at which

[1] p. 31.

[2] We have referred above to Theodulf's evidence. That afforded by the references to buildings in which the placita were held is also against popular control. References in English charters appear to indicate that the gemot was held in the open air. B. 392, the *gemotbeorh* is mentioned as a landmark. A *gemot-hus* is referred to in B. 596, (asterisked by Kemble). A thousand men are present at one gemot (K. 1288).

[3] 808/813. 172, 13.

[4] K. 693. 1288.

[5] See cases in Bigelow's *Placita Anglo-Normannica.* On the other hand, the reference in III. Atr. 3 to the 12 senior thegns points to a specialization somewhat parallel to that of the Frankish scabini. This institution, however, like that of the Domesday "lawmen" in Lincoln, Stamford and other northern boroughs, is traceable to Scandinavian influence. Vinogradoff, *Eng. Soc. in the Eleventh Cent.* p. 5.

deeds which require publicity are transacted.[1] The shire, like the pagus, may bear witness as a body,[2] though it is not found giving evidence under inquest, as the pagus does, till after the Conquest.[3]

Both the ealdorman and the bishop are found sitting in the shiremoot to declare law.[4] On some occasions the ealdorman and the sheriff are found in the same gemot;[5] on others the sheriff is found alone or supported by the bishop.[6] The power of the bishop, especially in the reign of Cnut, has been pointed out by Dr. Zinkeisen.[7] The gerefa deems just dooms by the witness of the shire bishop,[8] and is especially exhorted to respect and assist him. The evidence of the charters thus supports the theory that the sheriff is the deputy of the ealdorman, even though he is still the king's gerefa and is responsible to him.

The large majority of cases heard before the shiremoot turn on questions of land.[9] We saw that at an earlier date the gerefa had competence in land cases, and in the later period the hundred moot is the first court to which a man must turn for justice. "Let no man take a man's property in distraint within the shire or out of the shire before he have thrice demanded his right in the hundred.

[1] II. As. 2. A lord is found for a man. II. As. 20, 3. The king's commands are declared. B. 1064. An oath is taken. Note also the cases quoted in *A. S. Law*, pp. 369, 374.

[2] II. Cn. 79.

[3] As in Francia occasional provincial assemblies of several counties were held (812. 177, 12), so we find late instances of assemblies of more shires than one in England. Bigelow, pp. 17, 64. Cf. Vinogradoff, *Eng. Soc. in the Eleventh Cent.* p. 91.

[4] III. Eg. 5, 2; K. 693, 755, 898, 1334. It will be noted that the bishop and the count co-operate also in Francia. The question of ecclesiastical jurisdiction cannot here be entered on. M. Beauchet has treated the matter very thoroughly; and it is evident from his work that the rival spheres of secular and religious jurisdiction were more clearly defined in Francia than in England.

[5] K. 755, 802, etc.

[6] K. 693, 732, 929, 1288.

[7] *Pol. Sci. Quarterly* (1895), p. 1405.

[8] Cn. 1020. 11.

[9] Dr. Zinkeisen gives instances. *Pol. Sci. Quarterly* (1895), p. 136.

And if he have no right the third time, then let him go to the shiremoot and the shire shall set him a fixed day." [1] It is thus evident that the greater part of judicial business is transacted in the hundred moot.

6. *The Hundred.*

The evidence for the early existence of the district known later as the hundred has been given above.[2] An apparent reference to the hundred court was noticed under Edward; the first trace of the name itself is found in Edmund's laws,[3] where the hundred appears as a body to which payment is made. In the Ordinance of the Hundred attributed to Edgar the hundred appears as a local community,[4] a body to which penal payments are made,[5] a judicial tribunal,[6] a police organization,[7] and a territorial division.[8] A system so elaborate does not present the appearance of complete novelty.

It does not seem probable that the problem of the hundred will ever be solved.[9] The ruling opinion appears

[1] II. Cn. 19. [2] Pp. 44 ff. [3] III. Em. 2.
[4] Hu. 4. [5] Hu. 2, 3. [6] Hu. 1. 7.
[7] Hu. 2, 5. [8] Hu. 5.

[9] The question has recently been raised once more by Freiherr von Schwerin in his *Die altgermanische Hundertschaft* (1907). His theory that the Old Germanic word *hund* had originally no definite numerical significance, but simply implied a large number, is a distinct contribution towards the solution of the problem, though it must be left to the philologists to determine its soundness. On the other hand, he excepts England from his general theory (pp. 176–192), finding in the English hundred not a development of the Old Germanic hundred, formed on English soil at the time of the Anglo-Saxon settlement, but an administrative innovation of the tenth century, originating in the personal association of a hundred men for police purposes described in Edgar's Ordinance of the Hundred and the Judicia Civitatis Lundonie. The hundred moot developed from the personal hundred in consequence of its thief-catching duties. This statement provoked a reply from Professor Rietschel (*Zeitschrift der Savigny Stiftung* (1907), pp. 342–434, Germ. Abt.), who upholds the numerical origin of the hundred, which he believes to have consisted of a hundred hides. He draws his illustrations from Scandinavia and England, and maintains that the division into districts of a hundred hides dates back to the Anglo-Saxon settlement; that the districts thus formed were organized by the people with a popular official known as the *hundredes-ealdor* at their head;

to be in favour of the existence of the district in question before the reign of Edmund. Those who believe in a numerical origin, whether of individuals, of households, or of hides, must hold that this district had always been known as the hundred, although it is not so mentioned in any records. Those who hold that the thing is old, but the name new, attribute the name to foreign influence. Mr. Adams[1] has no hesitation in affirming that Alfred took the name from Francia. A rival theory supported by Mr. Chadwick[2] and Dr. Liebermann[3] is that the name was borrowed from Scandinavia, and that its use is attributable to Danish influence.[4] The chief argument against Mr. Adams' suggestion is the dangerous argument from silence. It seems unlikely that no trace would be left in the laws of Alfred, Edward and Æthelstan of a new term introduced by Alfred. A name, moreover, is more readily borrowed from a neighbour who is close

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and that in the tenth century the central government, using the machinery already in existence, added a king's gerefa for administrative purposes, imposing a complete royal and judicial organization on the district (p. 416). He accounts for the silence of the laws before the tenth century by the fact that the hundred was a purely popular unit, and therefore ignored by royal legislation; and points out the scantiness of the references after, as well as before, the reign of Edgar. Professor Rietschel's argument is to some extent discredited by the length to which the numerical theory is carried, and by his indiscriminate use of Domesday material, but his revival of Stubbs' suggestion of the dual organization of the hundred under hundreds-ealdor and reeve is interesting, though it should be noted that Mr. Chadwick (p. 235) has considered and rejected this theory. Freiherr von Schwerin, in his reply (*Zeitschr. der Sav. Stift.* (1908), pp. 261–304, Germ. Abt.), whilst exposing the difficulties of the numerical "Hide-theory" in both England and Scandinavia, and reasserting his conviction that the English hundred is purely personal in origin, allows (p. 291) that before the tenth century a district and a court existed, the functions of which were eventually taken over by the hundred moot, which first came into existence to deal with cattle-thefts.

[1] Adams, *A. S. Law*, p. 21.

[2] Chadwick, p. 245.

[3] *Deutsche Literaturzeitung* (1905), 12.

[4] For the close resemblance in organization and functions between the *hundari* of North Sweden and the Anglo-Saxon hundred see Rietschel, *op. cit.*, pp. 348 ff.

at hand than from one across the Channel : of the two the Scandinavian theory seems the more plausible.

The analogy between the English ordinance and those of the Merovingian kings was long ago pointed out. There is little to add, however, to Stubbs' statements [1] as to the impossibility of connecting the two documents. There are no signs in the Carolingian capitularies that Chlothar's capitulary was still operative in the *centena*, and the relation of the personal and territorial centenae at the Merovingian period has been a matter of considerable dispute.

The centena is seldom mentioned in the Carolingian capitularies. The oath to the emperor is taken *per singulis centenis :* and the missi examine the able-bodied men who can serve in the host by centenae. The court of the centena is always described as the *centenarii placitum*. Here, again, the contrast between English and Frankish institutions is evident. The official side predominates to such an extent in Francia that the centena is lost in the centenarius, whilst in England the hundred is so prominent that we can hardly tell what were the functions of the *hundreds ealdor*,[2] and whether he is to be identified with the gerefa or no.

The hundred gemot is held every four weeks, and all men are bound to attend it on pain of paying *wite*.[3] As we have

[1] Select charters, p. 69.

[2] Hu. 2, 5. The *hundred man* summons men to the pursuit of a thief, and assists any men from another hundred who are pursuing a trail through his district. A similar task is performed by the gerefa under Æthelstan. VI. As. 8, 2, 4. The *gerefa* is mentioned in connection with the wapentake, III. Atr. 3, 2. IV. Eg. 8, 1. The secret introduction of strange cattle into the common pasture is reported by the tunesmen to the *hundreds ealdor*. Cf. II. As. 10. In the Leis Willelme 5 he is described as *praepositus hundredi* or *greve* (?) and takes charge of stray animals. He appears, exercising similar functions, as the *prefectus hundredi* E. Cf. 24, 2. The Leges Henrici 8, 1a, describe the head of the hundred as *aldremannus*, probably an attempt at *hundreds ealdor ;* the passage throwns no light on his functions.

[3] II. Cn. 17, 1. Cf. Dd. I. 269 (five shillings).

seen, most cases come here before they are brought to the shiremoot. Oaths are taken [1] and purgations made here.[2] Folkright is to be declared here, as at any other gemot, and a term is to be set for every suit.[3] No man is to appeal to the king for justice unless he cannot obtain right in his hundred.[4]

Few records of proceedings in hundred courts are extant.[5] It is thus impossible to determine who presides at the later period in succession to the gerefa of the earlier period. A writ of Edward the Confessor's, quoted above, refers to the *scirgerefa* and the *motgerefa* in this connection. It is possible that the motgerefa is to be identified with the *hundreds ealdor* of Edgar's laws or the *greve* of the Leis Willeme.

We have seen that in Francia there is difficulty in determining the relation of the courts of the centenarius and the count. The clearest distinction is that of competence. In Wessex, on the other hand, the gemot of the hundred has apparently similar powers to that of the shire, but the procedure is quite different in the two countries. A suit could not be begun in the hundred and completed in the shire, as a case could be carried on before the centenarius and completed before the count. Thus, apart from the position of the officials, the contrast of the courts themselves is unmistakable, in spite of coincidences such as those between the great county and the *placitum majus*.[6]

7. *The Burh.*

Edgar's laws declare further that the burhgemot shall

[1] I. Atr. 1, 2; II. Cn. 30, 2.
[2] II. Cn. 22, 1.
[3] Hu. 7.
[4] II. Cn. 17.
[5] Dr. Zinkeisen mentions only one instance in the charters. *Pol. Sci. Quarterly* (1895), p. 143.
[6] We have seen that it is possible that there were two sorts of placita held by the centenarius himself. It is not clear at what date the special courts of the hundred, later known as the sheriff's tourn, came to be distinguished from the ordinary meetings.

be held thrice a year.[1] Mr. Chadwick[2] has brought forward a theory, based on the Burghal Hidage and on various indications in the laws of Edward and Æthelstan, according to which the union of different shires to form the great ealdormanries was accompanied by a development of the burh system, primarily for military purposes, but also for administrative purposes. The shire, according to this theory, was organized into districts, each bound to support a burh in its midst, probably by some system such as Maitland and Mr. Ballard have described. Various references in Æthelstan's laws, especially those mentioning "the men who pertain to the burh"[3] support the theory, and the silence of the laws and of the Chronicle as to the shire of this period is perhaps significant.[4] It is difficult, however, in the face of our lack of material, to say how far the shire system may have fallen into abeyance. If there is no longer an ealdorman to each shire, the shire itself appears as a judicial and administrative district in full working order, and it has been pointed out that the creation of the Mercian shires[5] must be placed between 1000 and 1016, and is probably to be attributed to military motives. A failing system would hardly be extended to such a degree. If the shire system had fallen into abeyance it was very effectively revived. There is nothing in the Carolingian system of government comparable to the burghal organization. The *castella* occasionally mentioned appear as military, not political units; there is no

[1] Miss Bateson (*E. H. R.* (1905) p. 146) has suggested that here, again, the double system of sessions is to be traced, and that the three meetings of the law are only the "great" ones.

[2] Chadwick, pp. 219 ff.

[3] II. As. 20, 1, 4.

[4] The organization of a hundred may (Chadwick, p. 247) be imposed on a burghal system. On the other hand, it is quite as possible that the burh system is imposed on the hundred system (Stevenson, *E. H. R.* (1905) p. 349).

[5] Rev. C. S. Taylor. *Trans. of the Bristol and Gloucestershire Archæological Soc.* (1898) pp. 32 ff.

trace of any other local placitum besides those of the count, the centenarius and the immunity.

Thus if the two systems of administration are considered as a whole the resemblances are found to be numerous, yet in no case so strong as to suggest the direct indebtedness of one country to another. The differences in geographical and other conditions are so great as to accentuate the existing variations in institutions, whilst the difference of fulness in the sources tends further to obscure the comparison. The gaps in the history of the two countries are wide enough to leave room for many alternative explanations of the scattered facts which are as yet safely ascertained.

CHAPTER IV

THE BENEFICE AND THE VASSAL SYSTEM

1. *Lordship and Vassalage in Frankland.*

In the Carolingian Empire the influence exercised by the growth of the beneficiary system on the local administration is so great as to render necessary a slight consideration of the institutions of personal and territorial dependence, both here and in England.

From the long and heated discussions on the question of origin a form of compromise has been reached between the rival theories of Waitz and Roth. Brunner has set forth the present state of the question, whilst M. Flach has introduced a fresh subject for debate. His main contention has something in common with the views of Lehüerou, who derived the whole feudal system from the extension of the *mund*. To M. Flach the personal element predominates in the relation of the lord and vassal, and he denies the complete territorialization of the connection during the ninth century, departing, in his second volume, from the view set forth in his first.[1] If Waitz goes wrong in his anxiety to base the whole system of government on landownership, M. Flach is also led astray by his predilection for the Tacitean *comitatus* and analogous institutions. M. Pfister[2] has pointed out the danger of using the French Chansons de Geste as Flach does, and has also supported Waitz in his contention that the latter vassals did not develop from the antrustions.[3] In spite

[1] Flach, I. p. 123; II. pp. 430 ff. [2] *R. H.* (1893) vol. 53, p. 365.
[3] Waitz, II. pp. 343 ff.; IV. pp. 250 ff.

of exaggeration, however, M. Flach may be said to have established the priority, both in time and in importance, of the personal relation to the territorial, and thus, although it is the beneficiary system that most directly concerns our subject, we must consider the vassal system before the benefice.

The main innovation during the Carolingian period in the development of seignorial relations is their recognition by the government. Charles the Great not only recognizes the importance of the lord as a member of society by giving him duties and responsibilities alongside of the count; he not only makes the benefice a reward and condition of loyal service and a part of the military organization of the country, but he also regulates in the capitularies the relations between lords and vassals, declaring the causes for which a man might leave his lord, and the conditions under which a lord might receive a man who commended himself to him.[1]

(*a*) *Vassi Dominici.*

The capitularies indicate a very general prevalence of the relationship. Special predominance in these royal ordinances is given to the *vassi dominici*, whose semi-official position emerges more and more clearly as the ninth century advances.

They enter into this relation by commendation, the ceremonial of which is best described in the often-quoted entry in the Annals dealing with Tassilo of Bavaria.[2] "Tassilo . . . venit et more Francico in manus regis in vassaticum manibus suis semetipsum commendavit fideli-

[1] 801/13. 172, 16; I. 215, 8; 847. II. 71, 3. M. Guilhiermoz thinks that Charles attempted, in vain, to uphold the vassal as distinct from the beneficiary tie. Guilhiermoz, p. 240.

[2] *A. L. M.* and *A. Q. D. E.* 757. Note also the second commendation of 787 and cf. *Vita Walae*, II. 17. "Mementote etiam quod mei vasalli estis mihique cum iuramento fidei firmastis." *M. G. H. Scriptores*, II. p. 583.

tatemque tam ipso regi Pippino quam filiis eius Karlo et Carolomanno iure iurando . . . promisit;" or, as the older entry says: "recta mente et firma devotione per iustitiam sicut vassus dominos suos esse debent." Though Tassilo is finally condemned on national rather than on personal grounds, the clerical annalist blames him above all for the breach of his oaths; the conspiracy with Charles's other vassals is the most flagrant breach of all.[1]

The two sides of the relationship thus entered upon are already partly indicated. The vassus dominicus, whether he be a mighty duke or a palace servant, owes faith to the king, "as any man does to his lord." He also owes service, which may be performed in the royal palace or in the country. Flach[2] has pointed out the three classes of vassi dominici to which the capitula of 825 refer;[3] the *austaldi*[4] "qui in nostro palatio serviunt;" those who live on their own property; and those who have benefices and live without, that is, away from the palace. Exemption from military service is granted to those who are living in the palace and to their men if these are with them. For those who live on their own lands special consideration is given to each case; whilst all who hold benefices and live on them must go to the host.[5] It is on these last, who live without, that the general duties of assisting the count will fall. Their semi-official position is brought out very clearly in the capitularies. In the Spanish Mark, for instance, new-comers are to commend

[1] *A. L. M.* 788. Tassilo . . . confessus est . . . vassos supradicti domni regis ad se adortasse et in vitam eorum consiliasse.[11]

[2] Flach, III. p. 476.

[3] 825. 325, 1.

[4] This term is used, apparently only in Italy, for those vassals who live in the house of their lord. It is possible that this threefold classification applies only to Italy.

[5] Vassi dominici are mentioned at war in Charles's letter to Fastrada, *M. G. H. Ep. Kar. Aevi.* II. p. 528, and cf. *A. Q. D. E.* 782, where *clari atque nobiles* probably refers to them.

themselves to the count or to a vassus dominicus.[1] The vassi dominici, like the count, are exhorted to do justice.[2] They are described as *ministeriales*,[3] they collect dues from the lands of the fisc,[4] and appear in categorical lists with bishops, abbots, counts, and *reliqui fideles*.[5] They may be called upon at any moment to perform special duties for the king or his count.[6] The counts themselves are frequently vassi, commending themselves, perhaps, on receipt of their office.[7] The vassi are bound to attend the placita of the missi,[8] and they are found under the later kings assisting at the trial of one of their numbers, constituting, in fact, the first court of peers.[9] They assist at the granting of royal diplomata. Roth quotes from the Astronomer's life of Lewis an account of their duties;[10] to them, as to the counts and abbots, was committed the care of the realm, the defence of the frontiers, the protection of the royal vills. Walafrid Strabo,[11] again, compares their duties to those of the *capellani minores*.

To these duties correspond various privileges. The vassus dominicus does not appear to have had a triple worgeld as the antrustion had; this is, in fact, one of the main arguments against the development of the vassus dominicus from the antrustion. From the scale of the contributions which the king's missi are allowed to levy on the neighbourhood we gather that the royal vassal is below the count in social standing,[12] whilst from another

[1] 816. 263. [2] 779. 51, 21.
[3] 802. 98, 39. [4] Bouquet, VI. 652.
[5] 802. 101, 18 a; 818/9. 285, 18; 864. II. 316, 15, etc.
[6] Einh. Ep. 21.
[7] Ann. Lauresh. 799. "Comites et alios vassos suos." Ann. Bert. 837 ad. fin.
[8] 826. 310; 821. 300, 4. [9] 851. II. 74, 8. Flach, I. p. 232.
[10] Astronomus, c. 3, quoted Roth, *F. U.* p. 214.
[11] Cap. II. p. 515. This description applies to the *austaldi*.
[12] 819. 291, 29. The royal vassal who is also a count of course takes the higher standing.

passage it appears that the vassus with a large holding is equal to the *comes mediocris*.[1] The royal vassal has, however, a "dignity"[2] which is to be preserved and respected. By this is probably meant the right of precedence at the count's tribunal,[3] where, according to the Capitulare Mantuanum, he must receive and render justice.[4] The later capitularies indicate his right to demand trial before the king himself,[5] and the king's desire to keep control of the trial of his vassals.[6] The vassi, as we have seen, have a right to exercise the royal privilege of *mansionaticum* in all places, when acting as missi, whilst the similar right of the counts and abbots is more restricted.[7]

Another judicial privilege possessed by the royal vassal, at any rate in Italy, is the right to be represented at law by an advocate,[8] and also the right to appoint one of his own vassals to take an oath for him.[9] This last privilege is apparently of late growth.

The most tangible gain to the vassal, however, is the land which he holds of the king. The class of vassal who lived permanently in the royal palace was probably not large; in this case service was rewarded with sustenance and with special gifts. Those vassals who lived on their own property formed a diminishing class: the greater part of the royal vassals appear to have held benefices of the king.[10]

(*b*) *The Royal Benefice.*

The relation of commendation to the benefice is well

[1] 780. 52. [2] 823/5. 307, 26. Re-enacted 864. II. 313, 4.
[3] 781–810. 207, 9. 823 ? 321, 3.
[4] 781 ? 191, 13. Note also 810, 155. 5. 801/10. 210, 10.
[5] 884. II. 374, 11; 853. II. 272, 4. An instance of such a trial is given in Form. Imp. 46.
[6] 825. 326, 1. [7] 819. 291, 26.
[8] 801/10. 210, 10. [9] 884. II. 374, 11.
[10] 779. 48, 9; 807 ? 136, 4; 815. 262, 6; 811. 167, 7; 825. 325, 1. Tassilo held his duchy of Pippin (*A. L. M.* 787, 748), and also held two vills as benefices from Charles. 806. 127, 2.

illustrated in Einhard's letters. He writes in one case on behalf of a man whose grandfather and father have held a royal benefice *in Genawense pago*. The man himself is too unwell to come to the palace and commend himself to the emperor; he asks to be allowed to keep the benefice until he is able to take the journey.[1] In another letter the writer asks Lewis the German to be allowed to keep the benefice he has. He had thought it lay within Lothar's lands, and now he asks for Lewis's patience till he is well enough to come and commend himself.[2] This recalls a clause in the *Divisiones* of 806, 817, and 831,[3] where, however, men are expected to get new benefices, not new lords, on the death of the emperor. From these letters it would seem that if commendation has been prior to the original grant it has become of less importance than the benefice; the territorial connection is stronger than the personal. This makes us the readier to prefer the opinion of M. Flach's first volume to that of his second.[4] Waitz's [5] conclusion that he who receives a benefice commends himself to the grantor of it, whilst he who wishes to obtain a benefice must commend himself to the lord of the land, seems the safest formula to adopt. As M. Guilhiermoz [6] says, the promise of a benefice was a bait by which vassals might be secured. As we have seen above, the duties of the vassi who held benefices were different from those of the others, and the benefice was forfeit for failure to fulfil certain conditions and perform certain services,[7] whether these were looked upon as a "gift for a gift" [8] or as a duty owed from the land.

[1] Einh., Ep. 27. [2] *Ibid.*, Ep. 25.

[3] 806. 128, 9. "Ut post nostrum ex hac mortalitate discessum homines uniuscuiuscumque eorum accipiant beneficia unusquisque in regno domini sui et non in alterius." Note also 817. 272, 9; 831. II. 22, 6.

[4] Flach, I. p. 123, 129; II. p. 430.

[5] Waitz, IV. pp. 256, 257. [6] Guilhiermoz, p. 239.

[7] 779. 48, 9; 811. 167, 5; 818/9, 284, 16, etc. [8] Flach, III. p. 69.

Probably the question did not present itself in that form at that period.[1]

The important part played by the benefice in the national economy is clear from the frequent references in the capitularies. The obligation to care duly for the emperor's benefice is included under the general oath of fealty, along with the *ostile bannum*.[2] The missi dominici are charged with the duty of seeing that the royal benefices are *bene condricta*,[3] and that their owners are not diverting them to their own use or ownership. The counts and the officials on the royal vills hold benefices,[4] in payment for their services in all probability. The connection of the benefice with military service is essential, as will be seen later. Brunner's description of the holders of benefices as the kernel of the vassalage [5] applies with particular force to the royal benefice.

The connection of the king and his vassal was only terminated by death or by breach of the contract. The *Divisiones Regnorum* declare the vassi dominici free to commend themselves to whomsoever they will, though they are evidently expected, as Einhard's letters have shown, to commend themselves to one of the king's sons. Charles the Bald in 856 [6] gives all his vassi leave to choose new lords, but the emphatic manner of his assurance that they need not distrust him is proof of the novelty of the proceeding. The connection was thus for life and tended

[1] It is to be noted, however, that the gradual transformation of meaning by which *honor* comes to be the equivalent of beneficium indicates the incumbency of duty on the land itself. Note 877. II. 354 B.; Nithard, II. i. and instances given by Waitz, IV. p. 216.

[2] 802. 93, 6.

[3] 768. 43, 5; 789. 64, 35; 789. 65, 6; 802, 100, 10; 802. 104, 49; 809. 152, 9; 810. 153, 14; 810. 154, 9; 801/13. 171. 4; 819. 290, 11; 860. II. 300, 6.

[4] 800. 84, 10; 800. 88, 50; 806. 131, 6; 811. 177, 7, etc. In some of these instances reference may be made to private, not royal benefices.

[5] Brunner, *R. G.* II. p. 266.

[6] 856. II. 282, 13.

to become hereditary on both sides, as Einhard's letters illustrate.[1]

The vassi dominici have been treated apart as forming a specially privileged class, and also because some writers have given them a special origin, tracing them back to the antrustions. The latest author to revive this theory —against which Waitz, Brunner, and de Coulanges have declared—is M. Guilhiermoz, who, like M. Flach, derives the vassi dominici from the king's *truste*, but, unlike him, finds for them an extra-Germanic origin. He believes that they, like the Visigothic *Buccellarii*, were constituted in imitation of the household troops of the late Roman emperors and magnates. He holds that their number was great and their position menial, and attributes their rise in power under the early Carolingians to English influences. His arguments are not convincing; he does not make good his antithesis between the antrustions and the Tacitean *comitatus*, nor does he indicate at all clearly the steps by which the antrustions rose to a higher position.[2] M. Pfister has answered M. Flach's arguments.[3] The special position of the vassi dominici is attributable largely to the royal command of land and power to great benefices, and also to the special protection which the king could accord to those who commended themselves to him, in virtue of the special character of his *mund*.

[1] Einh., Ep. 27. The man's father and grandfather held the benefice before him. Ep. 29 refers apparently to a partition of royal benefices between two sons of the original holder. Note also Vaissete II. No. 105. (quoted Brunner, *R. G.* II. p. 252). "Deprecati . . . ut nos sicut avus noster avis eorum et postmodum genitor noster patribus eorum . . . concessit, ita et nos illis." The Capitulare Carisiacum shows that the practice is becoming common. 877. II. 358, 9 and 363, 4. M. Flach gives instances, I. p. 126. It is still, however a favour and not a right. Form. Imp. 49. Migne, cxxv. 1050. "Cum de rebus ecclesiae propter militiam beneficium donat, aut filiis patrum qui eidem ecclesiae profuerunt, et patribus utiliter succedere potuerunt."

[2] See Molinier, *R. H.* vol. 78, p. 341.

[3] *R. H.* vol. 53, pp. 357–67.

(c) The Vassals of Private Persons.

The capitularies, as has been stated above, contain numerous regulations of the relations of private lords with their vassals. The connection is entered upon by commendation,[1] accompanied by an oath, whose character is so sacred as to serve as a model for the universal oath of fealty to the emperor.[2] There is possibly some ceremony of giving a coin to the newly commended, but the one passage in which this is mentioned is ambiguous.[3] It appears that the king has some control of men's commendations,[4] and the count's rights are guarded in one passage.[5] The connection thus established is for life, the causes for which a vassal may leave his lord being defined in a famous passage [6] as attacks by the lord on the life, liberty, or honour of the vassal, and failure to protect him after he has commended himself into his lord's hands. He cannot commend himself to a new lord without the leave of his first lord;[7] the tie is, therefore, it seems, dissoluble by the will of the lord though not by the vassal's. After the death of the lord the vassal is free to choose a new one,[8] but, as in the case of the vassi dominici, he is expected to prefer one from the family of his late lord,[9] and an hereditary connection, though not yet established, is foreshadowed.

That which tends most of all, however, to perpetuate the relationship from one generation to another is the beneficiary tie.

[1] 816. 263; 823 ? 321, 3; 825. 325, 1, etc. Vita Hlud. c. 61, refers to commendation by a third person. *M. G. H. Scriptores*, II. p. 646.

[2] 805. 124, 9; 802, 101.

[3] 801/13. 172, 16.

[4] 805. 125, 19; 816, 262, 6.

[5] 787. 200, 13. The account of the placitum at Istria in 804 may be noted here. The duke promises: "Liberos homines vos habere permittam ut vestram habeant commendationem, sicut in omnem potestatem domini nostri faciunt." Waitz, III. p. 492.

[6] I. 215. 8.

[7] 787. 199, 5; 809. 150, 10; 865. II. 93, 6; etc. In Einh. Ep. 63, the lord gives his vassal *commendatorias literas.*

[8] 806. 128, 10.

[9] 757. 38, 9. Cf. Viollet, p. 430.

(*d*) *The Relation of the Benefice to the Vassal System.*

It will be as well to consider the general question of the relation of the benefice to the vassal system at this point. It is at least as debatable ground as the question of the legal origin of the benefice. As has been indicated above in the case of the vassi dominici, Waitz's conclusion seems on the whole the most satisfactory; that whilst the personal tie is the older, and, in fact, the more essential, it becomes in this period inseparable from the real tie. The commendation may be prior in time to the granting of the benefice, though even this, as we have seen, is not an invariable rule, but the benefice is becoming not merely an indispensable means for the lord to the getting of vassals, but also, from the vassal's point of view, the end itself, to which commendation is a means. This is a process which is by no means accomplished as yet. On the Spanish Mark, where practically new soil is being settled by new men under exceptional local tenures and customs, the distinction between vassalage and the tenure of benefices is still well marked.[1] The Spaniards may commend themselves to the counts or the royal vassals, and if, after this, they are granted benefices by their lords, they are bound to do service from it as other men do from their benefices. Thus, whilst vassalage without a benefice is possible, it does not involve the same duties as vassalage with a benefice. Einhard's letters show that a benefice was a necessity to the performing of due service. A certain man has lost his little benefice —how is he to serve his lord unless it is restored to him ?[2] Einhard's letters also make it clear that a man might hold a benefice of one lord whilst he was the vassal of another.[3]

Thus, on the whole, the beneficiary tie is not as yet identified by custom or enactment with the tie of *vassus* and *senior*, but it is not far from this, and is even tending

[1] 816. 262, 6. [2] Einh., Ep. 30. [3] *Ibid.*, Ep. 1, 24, 39.

to become the more important element in the relation of man and man.

Into the question of the legal origin of the benefice we cannot enter here; a good authority has pronounced it as yet unsolved.[1] A working hypothesis may be obtained by accepting the theories of Fustel de Coulanges and Brunner, who derive the *beneficium* from the *precarium*,[2] whilst recognizing, with Roth and M. Guilhiermoz, that the precarium persists as a distinct form of grant alongside of the benefice.[3] As regards the historical development of the benefice, Brunner's theory of the influence of military exigencies is the most satisfactory that has yet been presented. It is accepted by M. Viollet and M. Guilhiermoz, though it does not satisfy M. Molinier. It may, however, be felt that Brunner over-emphasizes the military character of the benefice. It is true that military service is especially attached to it in the case both of royal benefices and of those held from private persons, but the personal relations of the beneficiary and his lord are not dependent solely on this fact. It is the need for protection on the part of the weak rather than the need of troops on the part of the strong that fosters the rapid spread of beneficiary tenures. There is danger in over-emphasis of any of the various elements that go to make up the relations of lord and vassal, benefice-holder and benefice-granter.

Brunner's hypothesis as to the historical origin of the benefice may be thus stated.[4] The natural process by which lands throughout Francia were being granted out on revocable tenures was accelerated by Charles Martel,

[1] Molinier, *R. H.* vol. 78, p. 341.

[2] The royal grants were made in the form of *precaria* because they consisted mainly of Church lands, which by canon law could only be held in usufruct.

[3] A good proof of this fact is the record of holdings given in the supplement to the capitularies. 810. 253.

[4] *Forschungen*, pp. 1–75.

who seized a large quantity of Church lands [1] and granted them out by the ecclesiastical tenure of the *precarium*,[2] with a view to obtaining cavalry in his wars with the Saracens in Aquitaine; his two sons readjusted the grants and arranged the conditions by which such lands should be held; [3] and the process was continued under Charles the Great and his successors as being found the most efficient means of providing heavy armed cavalry. Circumstances, as we have seen, tended to forward the process of commendation, and the various classes of dependent tenures became assimilated to one type. The holders of benefices granted out portions of their benefices in their turn. Whether the right to do this was included in the first grant is not clear; it was undoubtedly done.[4]

(*e*) *The Personal Relations of Senior and Vassus.*

From the territorial relations of lord and vassal we can now turn to their personal relations; to the rights and duties of each party to the contract of commendation. The lord, as we have seen, owes protection to his men.[5] He assists them in difficulties [6] and carries on feuds on their behalf.[7] He may or may not grant them benefices, but he provides them with horse and armour [8] and leads them to war.[9] He is, indeed, responsible for their appearance

[1] Roth's view has been controverted by Ribbeck. *Die sogenannte Divisio des fränkischen Kirchengutes.* Diss. Leipzig, 1883.

[2] This theory does not exclude M. Guilhiermoz's suggestion that the benefices were analogous to grants by servile tenures to unfree dependents.

[3] 742. 25, 1; 743. 28, 2; cf. 779. 50, 14 (Forma Langobardica).

[4] Trad. Fris. 323. The regranting of the benefice is forbidden; also in Form. Imp. 25. But see 757. 38, 9; 807 ? 136, 4. Form. Imp. 46.

[5] I. 215, 8.

[6] Einhard is occupied with the marriage affairs of his vassals, Ep. 62.

[7] I. 217, 7; 850. II. 86, 3. Form. Sal. Bign. 9.

[8] Ermold. Nig. IV, 607. *M. G. H. Poetae aevi Carolini*, II. p. 75. 811. 167, 10.

[9] See below, Chapter VI.

there, and pays the heriban if they fail to appear.[1] He is also generally responsible for their conduct. He is bound to prevent them from committing depredations on the common grass.[2] In one passage we are told that he who consents is as guilty as he who commits a crime; the count is, therefore, to admonish the senior to punish his men.[3] More often, however, the senior is commanded to present his men to justice at the courts. The national administration is attempting to shift the burden of responsibility on to the shoulders of the senior;[4] this is doubtless the motive for the regulation that all who will not take lords shall forfeit their alod to the royal fisc,[5] and thus become, we may suppose, demesne vassals. We have seen before that all strangers must have lords,[6] and the isolated capitulum concerning landless[7] men implies that such must be dependent on some one who will be responsible for their appearance in the courts.

The lord might, instead of presenting his vassal to justice, appear as his representative in the courts. Two formulae show us the lord seeking justice for his vassal against another man through that man's lord.[8] This becomes the customary procedure. The lord's duty in this respect is merging in a right to judge his vassal himself.

Two passages of Charles's capitularies suggest a growth of seignorial jurisdiction. From the first,[9] which has

[1] 811. 167, 9; 808. 137, 5.

[2] 853. II. 274, 13. The men may, however, be unfree. Over his slaves the lord had absolute control. 804/13. 181, 9.

[3] 862. II. 308.

[4] 865. II. 93, 6; 866. II. 97, 1; 884. II. 372, 3.

[5] 873. II. 345, 4. [6] 803/13. 157, 4. [7] I. 218, 11.

[8] Cart. Sen. 27, 30. Marculf I. 27. Form. Alsat. 5. "Supplicamus vobis ut illi aut cui vobis placet jubeatis commendare ut nostrum iustitiam consequi valeamus." Note also Einhard's intercession for his vassal, Ep. 65.

[9] 787. 200, 13. This passage occurs in an Italian capitulary, and therefore may not apply throughout Francia.

already been noticed, it may be inferred that the count suffers in some way when men commend themselves. The man who is commended is enjoined still to perform his duty to his count. In the other [1] the missi are warned to see that royal justice does not suffer because men commend themselves to others. The clearest reference, however, is to be found in the *Concessio Generalis* (823 ?). In the case of the vassals of royal vassals :—" Si quid ab eis quaeritur, primum senioribus eorum moneatur ut iustitiam suam quaerentibus faciant; et si ipsi facere noluerint, tunc legaliter distringantur." [2] A later capitulary commands the lords to punish their vassals if they refuse to obey the royal decrees : [3] whilst yet a later one declares that vassals are to have such justice of their lords as their fathers had had of their lords.[4] Appeal from the lord's injustice is to lie to the king, who will amend it.

From these instances it seems certain that at least under the later Carolingians the lord had a definite jurisdiction over his vassals, whilst almost the earliest of Charles's capitularies recognizes his judicial responsibility for them.[5] This justice and this responsibility, as has

[1] 805. 125, 19. This refers especially to the payment of the heriban.

[2] 823 ? 321, 3. Penal jurisdiction seems to be implied in 823/5. 305, 17. The lord who will not correct the violator of the peace shall be deprived of his *honor*. It is possible, however, that this refers only to military discipline.

[3] 851. II. 73, 8.

[4] 869. II. 337, 2. " Vassalli . . . talem legem et iustitiam apud seniores suos habeant sicut eorum antecessores apud illorum seniores . . . habuerunt. Et si aliquis . . . suo homini contra rectum et iustitiam fecerit et se inde ad nos reclamaverit . . . hoc emendare faciemus." Cf. 819, 291, 23.

[5] 779. 51, 21. The " facere iustitiam " of this clause has been much discussed. Roth (*F. U.* p. 213) explains it in the general sense of " act justly." This general interpretation is not recognized by the editors of the capitularies, who classify their references under the two strictly judicial headings—" Recht geben " and " Recht pflegen "—to answer to justice and to do justice (Vol. II. pp. 649–50). The phrase is found with the meaning of " answer to justice " in 782/6. 192, 6, and in numer-

been often shown,[1] is nearly related to that which the lord possesses over his unfree dependents.[2] In so far as it exists apart from an immunity grant, it seems probable that seignorial justice is a modified form of domestic justice.[3] The forms and terms are similar; the right of representation, the duty of presentation for the graver offences. Its nature and extent in the Merovingian period have been analysed by M. Kroell.[4] These judicial rights, however, are not identical with those conferred by an immunity grant. One formula given by Zeumer [5] distinguishes very clearly between the benefice and the immunity; and the analogy of the holding of the royal vassal and an immunity which M. Guilhiermoz points out in the Capitulare Haristallense [6] is not by any means a proof that the vassi dominici were *ipso facto* immunists. The grant of immunity rights by Charles the Bald, in 877,[7] is evidently exceptional and temporary; there is, therefore, no ground for asserting that the tenure of a benefice gave such rights in the earlier part of the period. It is

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ous other passages of the capitularies; and Waitz (*Vasallität*, p. 21) and M. Flach (I. p. 96) are probably right in explaining this passage as referring to the duty of presenting criminals at the count's placitum. 782/6. 192, 7 also connects the duty "facere iustitiam" with the holding of a benefice. Its holder is parallel with the pontifical advocate of the preceding clause. Territorial rather than personal rights seem intended.

[1] Flach, I. p. 94. H. Sée, pp. 19, 108. Guilhiermoz, p. 318.

[2] Of the lord's penal and judicial power over his slaves there can be no question. It is established beyond doubt by numerous passages.

[3] Modified, however, by state action, as is shown by the capitularies already quoted. Note Dr. Seeliger in the *Hist. Viertelj.* (1905) p. 309, and in the *Am. Hist. Rev.* (1909) p. 241.

[4] Kroell, pp. 33–43.

[5] Cart. Sen. 35, "cuius nos nunc beneficium gradante animo pro mercedes nostrae augmentum non solum confirmasse sed etiam in novo sub immunitatis nomine concessisse cognoscite."

[6] Guilhiermoz, p. 134. 779. 48, 9. Compare also 779. 51, 21 with 803. 115, 23. The count assists the missus to force the vassus dominicus "facere iustitiam," whereas only the missus can interfere with the immunist.

[7] 877. II. 360, 20.

to the right of the lord over his unfree dependents that his judicial control may be traced, and also the connection of the judicial rights and the land. The tendency has been, as M. Flach shows,[1] to exaggerate the importance of the upper rungs in what later became the feudal ladder. The personal tie is closest in the lowest ranks; to the *precarium* of the small folk no less than to the *beneficium* of the great, is due the rapid development of the system; territorial lordship contributes as much to the growth of feudal justice as does the seniorate.

The duties of the lord to the vassal having been examined, the duties that the vassal owes the lord may now be considered. A trace of the obligation that later becomes suit of court may be found in the regulation that the count's vassals must attend the count's placita.[2] M. Guilhiermoz does not adduce any proof of his statement that this duty was becoming general.[3] The duties of the vassal were general in character,[4] being probably closely related to those of the unfree;[5] he was bound to obey his lord's commands whatever they might be. Especial reference is made to his military duties.

We have seen that in the case of royal vassals their vassals might take an oath for them at law. The counts were allowed to leave vassals to fulfil their official duties when they were at the host.[6] Similar liberties to other lords[7] indicates that the vassals might have to perform administrative if not judicial duties for their lords; and suggests, in the case of the count, that he would find it expedient to make some of his centenarii and vicarii his vassals. One indication of the value of vassals is given in the passage which relates how a bishop succeeds in

[1] Flach, II. p. 495. [2] 809. 148, 5. [3] Guilhiermoz, p. 260.
[4] Guilhermoz, p. 252. Brunner, *R. G.* II. p. 269, who quotes Lex Alam. 36. 3 and Lex Baiuw. II. 14.
[5] H. Sée, pp. 312 ff.
[6] 808. 137, 4; 819. 291, 27; 866. II. 95, 1. [7] 811. 167, 9.

usurping a see—"sollicitando clericos et vassallos eius omnemque familiam."[1]

The closeness of the tie is revealed by the fact that the vassal swears the national oath of fealty in the place where his lord lives,[2] and that he follows his lord even to the desertion of his wife if she refuse to accompany him.[3] In the account of the battle of Mount Süntel[4] there is a trace of that personal loyalty which is exemplified so frequently in Anglo-Saxon literature, notably in the story of Cynewulf and Cyneheard and in the poem of Maldon. We have seen before that Carolingian legislation sanctioned the permanency of the tie and encouraged the formation of such a connection if it were not previously existent. Alongside of the organization of the comitatus, this new machinery was coming into use for administrative, judicial and military purposes. If the classification "tam seniores quam et vassalli"[5] was not exhaustive in 787, it was before the fall of the Carolingian Empire.

2. *Lordship and Vassalage in England.*

Here, again, our materials are so scanty and ambiguous that it is not easy to construct a clear statement of the position of the English vassal either of the king or of other men. For persons apparently dependent on the king we find the expressions *comes* and *minister*, *gesith* and *thegn*, and the precise significance of these words is hard to determine, whilst in later sources we find the words *satelles* and *vassallus* employed, apparently with a similar meaning. For the Latin *dominus* or *senior* of Francia we have the two words *hlaford* and *landrica;* the distinction here is not so difficult to find.

[1] 859. II. 448, 5.
[2] 792 *or* 786. 67, 4; cf. 816. 268, 2.
[3] 758/63. 41, 9.
[4] *A. Q. D. E.* 782, "qui hos secuti potius cum eis perire quam post eos vivere maluerunt."
[5] 787. 198, 4.

(*a*) *The Gesith and the King's Thegn.*

Mr. Chadwick[1] has suggested that, whilst the *comes* of Bede is the Latin translation for *gesith*, this word bore a different meaning in Northumbria and Wessex. The Alfredian translation of Bede's *comes* is almost invariably *gesith*, whilst Bede's *minister* or *miles* is translated *thegn*;[2] but the other West Saxon sources appear to prove that the gesith-cund man was dependent not on the king himself, but on some other men, and he disappears from the laws after the time of Ine, save for the reference to gesith-cund kin in *Northleoda laga*.

Mr. Chadwick points out that the position of the king's thegn in Ine's laws is superior to that of the gesith, and that the thegn appears to owe his superiority to his dependence upon the king; and he suggests that the gesith was never under the immediate lordship of the king.[3] In this conclusion he is in accordance with M. Guilhiermoz,[4] who, however, makes no distinction between the Northumbrian and West Saxon gesith. From the use of the expressions in Beowulf it seems that the terms *gesith* and *thegn* were originally used of the same person, and it appears quite possible that their meaning was specialized differently in Wessex and in Northumbria.[5] The meaning of the cognate form *gasindius* is of interest. It is found among the Lombards, and, to a certain extent, among the Franks, for the personal dependents not only of kings and queens but also of *duces* and *judices*.[6] Perhaps it offers a closer analogy than does the antrustion, with whom Brunner compares the gesith at some length.[7]

[1] Chadwick, p. 325, 349.
[2] See instances given by Mr. Plummer, *Life of Alfred* (1902), p. 175.
[3] Chadwick, pp. 326, 346, 349. Dr. Liebermann does not accept this limited definition.
[4] Guilhiermoz, p. 94. [5] Chadwick, p. 348.
[6] Brunner, *R. G.* II. 260.
[7] *Ibid.*, *R. G.* 259; 98–100; *Forschungen*, p. 84.

Both gesith and antrustion, he says, were originally personal dependents of the king, living in his hall, owing special service, having a special wergeld and hereditary rank; both tend to become a territorial class; both are succeeded by a body of men which develops along somewhat similar lines.

The chief objection to Mr. Chadwick's theory is the difficulty of finding a class of men below the king of such power that their dependents, whether owning land or no, should have a hereditarily privileged position. The gesith is a person of some importance, evidently having men under his control. He may make an agreement for them with the king,[1] thus exercising some sort of domestic justice. Strangers put themselves under his protection, and he has his share in their *wer*.[2] He has to pay a heavier *wite* for neglect of the fyrd [3] than the ordinary ceorl, especially if he owns land. Mr. Chadwick suggests that *landagend* implies a holding of some particular minimum size, such as five or ten hides,[4] and that this in its turn implies lordship over a certain number of *gafolgeldan*.[5] The gesith's lands are large enough for him to need a *gerefa*,[6] and he has a *burgbryce* of thirty-five shillings.[7] By the period of *Northleoda laga* his position is apparently based on land rather than on personal relations with another.[8]

The gesith's position is thus semi-official, and if Mr. Seebohm's account of his functions [9] is over definite, there is still enough to make Mr. Chadwick's interpretation doubtful. M. Guilhiermoz argues from these passages that

[1] Ine, 50.

[2] Ine, 23, 1. Dr. Liebermann, however, explains *gesiþ* here to mean fellowship, not taking it in its technical sense. His translation is based on the reading *congildones* in the Quadripartitus version, this being the word used in Alfred's laws for the O. E. *gegildan*.

[3] Ine, 51. [4] Ine, 24, 1, 2. 70. [5] Chadwick, p. 102.

[6] Ine, 63. [7] Ine, 45. [8] Northl. 11.

[9] Seebohm, *Tribal Custom in A.S. Law*, pp. 417–22.

in England the thegns of private persons had a highly privileged position, and that England by the end of the seventh century had a nobility such as was not known to French law till the twelfth century.[1] He represents the king's thegn as already occupying a high position in the eighth century, holding land and possessing hereditary rank. This he regards as an advance from an earlier subordinate and semi-servile condition,[2] and to it he attributes a corresponding rise in the position of the vassi dominici under Charles Martel. The Northumbrian kings had granted out lands for the support of soldiers on the frontier, and Charles Martel was only copying them in his creation of benefices, as he copied them in the rites used at his coronation.[3]

This theory is based on the supposition that the English king's thegns, like M. Guilheirmoz's antrustions, were originally largely an unfree class; a supposition supported by no facts. If Beowulf is to be considered a picture of early Anglo-Saxon life, there seems no obstacle to the acceptance of the chief's following as there described—"dugu& and geogo&"—as the predecessors of the king's thegns of Alfred's days. M. Guilhiermoz's theory, again, attributes a very definite meaning to an obscure passage in Bede[4] that has been explained variously.[5] The borrowing of an ecclesiastical rite stands on a somewhat different level from that of an entirely secular administrative measure, as the Church was the great medium of inter-

[1] Guilhiermoz, p. 464.

[2] This humble position is deduced from the meaning of the word *thegn* or *minister*, and from Bede, H. E. III. 14.

[3] Guilhiermoz, pp. 92–100.

[4] Bede, epistle to Egbert, c. 11.

[5] Chadwick, pp. 367 ff. Professor Vinogradoff (*E. H. R.* (1893) p. 13) does not think that the passage implies temporary or even conditional tenure. There seems no more reason to derive Charles Martel's measures from Northumbria than to give them an emphyteutic origin.

national communication. Moreover, Boniface, who introduced the ceremony of unction in Francia, was a West Saxon and would hardly be likely to introduce Northumbrian expedients. Finally, the analogy discovered by M. Guilhiermoz is not in reality very close. Charles Martel, by hypothesis, took Church lands for lay purposes —to furnish soldiers. Bede's letter states that the lands which ought to provide for soldiers do not do so; because —and this is his chief ground of complaint—the king has granted them out, for the purpose of founding monasteries, to men who do not found true monasteries but homes of wickedness. When M. Guilhiermoz says, therefore, of Charles's policy "Nous sommes très portés a voir là une adaptation des usages Anglo-Saxons,"[1] we are not inclined to agree with him.

We can now examine the position of the king's thegn and consider in what respects it presents a parallel with that of the vassus dominicus. There is no trace of a ceremony of commendation, though such may well have existed.[2] Whilst treason to the *hlaford* is a "botless" crime,[3] *hlaford* is not used as an attribute of the king till a fairly late date.[4] Similarly, the general use of *senior* for the king of Francia does not begin to be common till after the reign of Lewis the Pious.[5]

The duties of a king's thegn are somewhat vaguely described in *Geþyncðo*, which professes to give an account of old times. The thegn has special duty in the king's

[1] Guilhiermoz, p. 92.

[2] The subordination of one man to another is expressed by the phrases *ga to honda* (Ine, 62); *on handa gan* (Af. 42, 1); *hand on hand sylle* (II. Ew. 6). These at once recall the expression *se in manus eius tradere.*

[3] Af. prol. 49, 7; Af. 1, 1; Af. 4, 2.

[4] VI. As. 8, 9 is the first instance.

[5] All the instances given in the index to the capitularies are of a later date than 840. The rapid extension of the term is, however, remarkable. 866. II. 284, 6, *senioratum* means allegiance to the king.

hall,[1] which corresponds to that performed by the *vassi famulantes* or *austaldi*;[2] he performs riding service,[3] which may be compared with the duty referred to in Einhard's letter quoted above.[4] We may note, also, Maitland's suggestion that riding service includes special military service. Whilst the gesith apparently owes such service[5] there is no direct evidence for a similar duty on the part of the king's thegn, though, as will be shown later, there is some indirect evidence.[6]

The general official position of the king's thegn resembles that of the vassus dominicus. In several instances he is mentioned together with the king's gerefa. He, like the gerefa, is forbidden to take bribes.[7] He is commanded to keep order and obey the royal commands,[8] in connection possibly with the general taking of *wedd*. He is ordered to have his men under pledge,[9] like the gerefa. He is expected to assist in making the priests obedient.[10]

There is no record of any institution similar to the Frankish judgment of peers which is being evolved at the close of the Carolingian period. We may note, however, the signature of the *ministri* to the royal charters of Wessex from 833[11] onwards, for these in many cases indicate the presence of king's thegns at the royal councils.

[1] Geþyncðo, 2. Cf. Beowulf, l. 667. "Haefde cyning seleweard aseted, sundor nytte beheold." The account of Geþyncðo has much in common with that given by Asser, c. 100, of the duties of Alfred's *satellites*.

[2] 811. 167, 7; 821. 300, 4; 823/5. 307, 26; 864. II. 313, 4.

[3] Geþyncðo, 3. [4] Einh. Ep. 21. [5] Ine, 51.

[6] The use of the words *miles regis* for king's thegn would be more conclusive were not the meaning of *miles* and *militia* somewhat ambiguous. The institution of the heriot, recorded only in Cnut, but traceable as early as Beowulf, suggests such a duty, and all the evidence of Beowulf is in favour of such an idea.

[7] V. As. 1. 4. [8] VI. As. 11.

[9] III. Em. 7. [10] IV. Eg. 1, 8.

[11] B. 393; B. 411, etc. The number of *ministri* who sign varies from one to sixteen.

A difficulty in determining the significance of references to the thegn is the later use of the word absolutely,[1] without a preceding possessive. When this occurs the thegn may be dependent on some other than the king, though in many instances the king's thegn is evidently meant.

Alongside of the duties owed by the thegn, privileges and rights are traceable. His social status is in some respects more clearly marked than that of the vassus dominicus. His burhbryce is sixty shillings in Ine's laws, as contrasted with the thirty-three or thirty-five shillings of the gesithcund or twelfhyndman.[2] His oath apparently has a special value.[3] Like *vassus dominicus, king's thegn* is a term which may be used to include bishops and ealdormen.[4] From the special mention of king's thegns in the Chronicle [5], as well as from other passages, it may be inferred that they were people of importance. Their dignity is especially referred to in Edgar's laws,[6] the passage recalling those in which the honour of the vassi dominici is upheld.[7]

The judicial privilege which the vassi dominici possess under the later Carolingians is assured to the thegns by Æthelred.[8] "Over a king's thegn none but the king shall have jurisdiction." Though the existence of such a privilege before this time is quite possible, there is no sign of it in the laws. *Geþyncðo* declares that the thegn of a king's thegn might take the fore-oath on his behalf;[9] a right that recalls the similar privilege of the vassi dominici. In II. Cnut, 22, 2, the same right is apparently attributed to all thegns, whether royal or medial. Thus

[1] Not till the reign of Æthelstan. Chadwick, p. 84.
[2] Af. 39; Ine, 45; cf. Ine, 6. [3] A. Gu. 3.
[4] Chron. 897. [5] Chron. 871, 874, 897, 905, 917.
[6] IV. Eg. 2a, "mine þegnas haebben heora scipe on minum timan swa hi haefdon on mines faeder."
[7] 823/5. 307, 26; 864. II. 313, 4.
[8] III. Atr. 11. [9] Geþyncðo, 3.

the two main judicial privileges of the Frankish royal vassals are shared by the English king's thegns; but there is no proof of their existence till a late period.

Whilst it is quite possible that the thegn class originated in landless vassals who lived in the king's hall, there is evidence in plenty for the territorial position of the king's thegn from 828 downwards.[1] The charters record grants of land by the West Saxon kings to their thegns—*fideli meo ministro*—in consideration of faithful service. These grants are made fully and freely, with permission to the thegn to bequeath the land to whomsoever he pleases at his death. In most cases the land is freed from secular burdens, the *trinoda necessitas* being excepted. In some instances the grant is made in consideration of money. Beyond the fact that they are made in consideration of past services, no condition appears to attach to these grants.[2] Maitland suggests, however, that duties may be implied which are not expressly stated.[3] Without St. Oswald's own account of the terms[4] on which he grants his *laens* we could hardly guess the many and various duties that such a tenure involved. Bookland, whenever referred to in the laws, appears to be specially connected with the king—to be held, in fact, by a royal privilege.[5] As such there appeared to be obligations attaching to it. The man who has bookland, by Alfred's laws, may not leave it from his kin but by the witness of the king and his

[1] *E. g.* B. 396, 442, 467, 468, 491, 496, 506, 520, 550. B. 591, in referring to a transaction of Alfred's reign, relates how the king's gerefa confiscated the territory of a certain thief "because he was the king's man."[23] It is not stated whether the *yrfe* in question was bookland or folkland.

[2] An exception pointed out by Brunner is a Mercian charter of 801 (B. 303). Land is granted by Cænwulf and his brother to their common thegn "in sempiternam possessionem eo videlicet iure si ipse nobis et optimatibus nostris fidelis manserit minister et inconvulsus amicus."[2] A general condition is found in later grants. B. 814.

[3] *D. B. and B.* p. 317.

[4] K. 1287; B. 1136.

[5] *D. B. and B.* p. 316.

bishop.[1] The thegn who has a church on his bookland must give to it a third part of his own tithe.[2] The king's gerefa has to take care that none of the *wites* paid on bookland fail to reach the king,[3] whosoever man the outlaw be, if he have bookland.[4] It seems as if in some respects bookland is the West Saxon equivalent of the royal benefice.[5]

We may note further the relation between service and land in the account given by *Geþyncðo;* whatever is the precise meaning of *utware* [6] it is evidently a service due from the five hides held by the thegn.[7] The thegn of Rectitudines Singularum Personarum owes military service from his bookland;[8] and according to Cnut's law the man who flees in battle forfeits his bookland to the king.[9] It is a far call from Cnut to *Beowulf*, but this last law recalls the passage, quoted by Mr. Chadwick, in which Wiglaf tells the cowardly thegns of Beowulf that now their kindred will go landless when the story of their desertion of Beowulf shall be known.[10] It is thus just possible that the custom has a Scandinavian origin, but it is more probable that it rests on a wider basis. The

[1] Af. 41.

[2] II. Eg. 2; I. Cn. 11. Note also the *cyrican* and *bellhus* on the estate of the thegn in Geþyncðo. Churches could be held as benefices in the Carolingian Empire (Imbart de la Tour, *R. H.* vol. 68, p. 41), and dues were owed by the beneficiary to the church on his land (*nonae et decimae*, etc.).

[3] I. Atr. 1, 14.

[4] II. Cn. 13.

[5] Vinogradoff, *Growth of the Manor*, p. 127. "The followers receive land on conditions closely resembling the continental practices of beneficiary endowment." But all thegns do not necessarily hold bookland. Vinogradoff, *Eng. Soc. in the Eleventh Cent.* p. 405.

[6] See below, Chapter VI.

[7] Geþyncðo, 3. This refers, however, to a medial thegn, not to a king's thegn.

[8] Rect. Sing. Pers. 1. We may compare the regulations of Ine, 64 f., by which a gesith must not leave his land uncultivated, with the duty of keeping a benefice *bene condrictum* as enforced in the capitularies.

[9] II. Cn. 77, 1.

[10] Beowulf, 2885.

possible grants of the Northumbrian kings, as we have seen, give no clear evidence.[1]

Bookland then presents some analogies to the Frankish benefice. "It proceeds from the wish to place the fighting and praying portions of the community in a privileged position."[2] It must be remembered, however, that bookland, as a form of tenure, owes its existence, so far as can be seen, to a desire for relaxation of the traditional laws of family inheritance,[3] and that privileges over land already possessed are as often the subject of a grant as new land itself.[4] It is because popular desires coincide with royal necessities that the bookland becomes a means of securing special services from men. Maitland thinks it possible that the tenure of bookland in the narrower sense was modified by the practice of loaning land.[5] It is, of course, impossible to speak with certainty where there are so few data, but all the facts we have are opposed to a theory of such extensive territorial dependence of the thegns on the West Saxon kings as is apparent in the relation of the vassi dominici to their kings.

There is no proof that the class of the king's thegns was hereditary any more than that of the vassi dominici. The expression "thegnborn" is found only once,[6] and is there used very broadly; the passage could scarcely be

[1] The instances given by Mr. Chadwick in his note on prehistoric land tenure indicate that the early kings made revocable grants of land to their followers. He does not consider that these were grants of bookland, the use of the book for secular purposes being of a comparatively late period. Chadwick, pp. 367 ff.

[2] Vinogradoff, *Eng. Soc. in the Eleventh Cent.* p. 196.

[3] *Ibid.*, *Growth of the Manor*, pp. 143, 246.

[4] *Ibid.*, p. 216.

[5] *D. B. and B.* p. 317. See below, pp. 93 ff.

[6] Duns. 5 (935 ?). If a Welshman slay an Englishman (beyond the river) he need only pay half the wergeld, nor need an Englishman pay more than that for a Welshman there: "Sy he þegenboren, sy he ceorlboren."

adduced as evidence for an hereditary class of thegns, certainly not of the heredity of king's thegns.

The clearest distinction between king's thegns and those of other men is only found in II. Cn. 71, where three distinct classes of thegns are described. The meaning of the word itself implies dependence, and it is clear from very early times other men besides the king possessed dependents. As the Frankish royal vassal had his own vassals, so the thegn of *Geþyncðo* was followed by another thegn, and bishops had thegns no less than the king and queen.[1] In the later laws, however, when the word *thegn* is used absolutely, the sense of service and subordination is being merged in that of rank. Dr. Liebermann explains the thegn of the later laws as being little more than a free landowner. He points out, for instance, the difficulty of finding two men of high rank in each wapentake to help in the collection of Peter's pence,[2] or the twelve men of III. Æthelred 3. *Geþyncðo*, which makes the true antithesis, "þegen ond þeoden," is professedly archaic. It seems plain that the word *thegn* in its later use implies social position rather than personal dependence on a superior.

(*b*) *The Hlaford and the Laen.*

In seeking a relation corresponding to that of *senior* and *vassus*, more may be learnt from a study of the position of the *hlaford* and the *landrica* than of the medial thegn. The universality of the connection is indicated by the number of passages in the laws which have to do with the relations of the freeman and his lord. The allusion in Alfred's preface reflects a well-established institution. The word *hlaford* is used for

[1] Vinogradoff, *Eng. Soc. in the Eleventh Cent.* p. 408.

[2] Northu, 57, 2. Cf. I. Atr. 1, 2, and note the references in the charters to the thegns of the shire.

the lord both of free and of unfree; in *Episcopus* the lord is to be urged to justice both to his men and to his slaves;[1] but it is not difficult, as a rule, to determine with which class of relations the laws are dealing.

The regulations with regard to *hlafordsokne* recall those on commendation in Francia. The witness of his former ealdorman is required by Alfred's laws for the man who wishes to seek a new lord.[2] The power of the count to control commendations, at least in Italy, has been noticed above;[3] he was also bound to keep an account of the lords of strangers,[4] though this had earlier been the task of the missi.[5] The commendation of a man by his friends is known in Francia, though it does not appear to have taken place in the mallus as the English "commendation" does in the folkmoot.[6] The declaration that all men are to have free *hlafordsokne*,[7] is almost identical with that of the *Divisiones Regnorum:* "Et unusquisque liber homo . . . licentiam habeat se commendendi . . . ad quemcumque voluerit." Again, as in Francia, no man is permitted to receive the runaway man of another without the leave of his late lord.[8] Treason to the lord, as was shown above, is a crime to which no mercy may be shown as early as Alfred's reign, and the later legislation is not more lenient to it.[9] Whilst it is not allowable that a man fight against his lord, it is right and fitting that either fight on behalf of the other.[10]

The question of the real connection of the lord and vassal again arises. Does the *hlaford* grant land to his

[1] Episc. 10. "His mannum ne forðan his nyd-þeowan."
[2] Af. 37. [3] 787. 200, 13. [4] 864. II. 323, 31.
[5] 802/13. 157, 4. [6] II. As. 2. II. Ew. 3.
[7] IV. As. 5. III. As. 4. V. As. 1, 1. "I will that every man who is innocent follow such a lord as he wishes."
[8] II. Ew. 7. II. As. 22. III. As. 4. IV. As. 4. V. As. 1.
[9] Af. prol. 49, 7. Af. 1. 1. Af. 4, 2. II. As. 4. III. Eg. 7, 3. II. Cn. 26, 57, 64.
[10] Af. 42, 5, 6.

man as the king does to his thegn? If so, is the land held by a conditional tenure? *Gepyncðo* shows us the thegn's thegn holding land, but it is to the king's *utware* that he holds it. He serves his lord in the king's hall, and he may represent him at law, but there is no sign that he holds his land from his lord or that he owes his lord service from his land.[1] On the other hand, the charters prove the existence of loans of land made by others than the king, from 721 onwards.[2] In every case, however, these are the grants of clerics, and the large majority are made by the see of Worcester. They prove the existence of an institution which offers, as Maitland has shown, close resemblances to the *precarium* and the benefice of Frankish law. The services of Oswald's law, given at length by St. Oswald,[3] are, as Maitland says, almost feudal. The riding service in especial suggests the similar duties owed by Frankish beneficiaries to their lords. The resemblances are, in fact, so striking, as to make the possibility of imitation worth considering. The ecclesiastical source of the custom is an additional ground for expecting such a connection. Maitland has pointed out that there are signs that "some of the English kings occasionally did what had been done on a large scale by Charles Martel or his sons, namely, compelled the churches to grant benefices to lay noblemen."[4] He gives instances dating from 849[5] (Birhtwulf of Mercia), 858[6] (Æthelbald of

[1] Mr. Chadwick suggests that the reversion of the heriot to the grantor is analogous to a similar tenure of land. (Chadwick, p. 376.) If the gesith is not immediately dependent on the king, the service due from his land is probably owed to his lord.

[2] B. 166, 271, 307, 455, 490, 608, 1087, etc. K. 617, 630, 679.

[3] B. 1136.

[4] *D.B. and B.* p. 301. Cf. the Domesday record of grants made by churches "ob amorem regis." Vinogradoff, *Eng. Soc. in the Eleventh Cent.* p. 225–6.

[5] B. 455.

[6] B. 495.

Wessex) and 908[1] (Edward the Elder). When it is noted that the very word *beneficium*[2] is used in this connection it is difficult to avoid the conclusion that here, at last, there is conscious imitation of Carolingian custom; though the full phrase *beneficium præstitum*[3] is not found till a later date.

Judging by the charters that are extant it is only in the tenth century that this type of tenure is fully evolved. On the other hand, the first instances of the *laen* are found in the eighth century, and it is clear that whatever borrowing there was, must have taken place in the Merovingian period. The *laen* is evidently more like the *precarium* than the *beneficium*. The beneficium of the Carolingian period is granted for a life, and is revocable for neglect or breach of faith on the part of the holder; the precarium is granted for one, two, or three lives,[4] but is often renewable every five years.[5] The *laen* is, as a rule, granted for three lives,[6] but does not contain a reference to quinquennial renewal. Again, the precarium usually contains a stipulation for the payment of a *census*, whilst the *laen* sometimes, but not always, refers to services that are to be rendered by the holder. Above all, the precarium is essentially an ecclesiastical form of grant, whilst the beneficium is frequently granted by a layman. The *laens* of which we possess records are practically all grants by churches, though this may be due in part to the longer traditions and better muniment rooms of the clergy, and at least one early record refers to a *laen* held of a private person. In a document already

[1] B. 618. [2] B. 495. [3] B. 1136.

[4] Form. Aug. Collectio B. 16, 17, 7; 6, 5, 3, 2, 15. Sal. Merk. 34, 35, etc.

[5] Form. Sal. Lind. 3, 4. Sal. Merk. 5. 845. II. 404, 22.

[6] Seebohm (*Tribal Custom in A.S. Law*, p. 525) shows reasone for believing that the precarious grant for three lives may have had a native origin.

quoted,[1] after the gerefa seizes on the thief's *yrfe*, a certain Ordlaf then takes possession of his own land which Helmstan, the thief, had as a *laen* from him, since Helmstan could not forfeit Ordlaf's land to the king. A very interesting passage at the end of Alfred's preface to the translation of *Augustine's Soliloquies*,[2] is evidence of the distinction between loanland and bookland, as well as of the fact that *laens* might be granted by individuals. "Every man after he has built any cottage on his lord's *laen*, desires that he may remain there for a time . . . and provide for himself in every way from the *laen* . . . until the time that he gain bookland and an eternal inheritance (*aece yrfe*) through his lord's kindness." [3]

The parallel with the Frankish precarium is so marked that it is no surprise to discover that Ælfric's gloss for *precarium* is *laen*. We have some ground, then, for supposing that the tie of lord and vassal was at times strengthened by a grant of loanland, though it is probable that such grants were made where no such personal connection existed. We have also a good case for a deliberate imitation by English prelates of a practice prevalent among their Frankish brethren, and for the extension of this practice amongst laymen as well as clergy, small men as well as great. The tenures of Oswaldslaw may or may not be the result of foreign influence; they are explicable on purely insular grounds, and the resemblances may be the result of coincidence, but the process of which they are the product was begun by an impulse from without. It cannot be said, however, that there is any exact parallel in England for the official use of the benefice in Francia, or in Francia for

[1] B. 591.
[2] Ed. H. L. Hargrove, *Yale Studies in English*, XIII, 1902.
[3] Compare the phrase *on ece erfe* in the landbooks, *e. g.* B. 605.

the distinction of loanland and bookland (in the narrower sense of the word) in England.[1]

(c) *The Personal Relations of Lord and Man.*

The laws throw considerable light on the personal relations of the *hlaford* and his man. Like the Frankish senior he maintains his man's quarrel;[2] like the Frankish senior he has a large responsibility for his man's actions, and a domestic if not a larger jurisdiction.[3] In both countries it is not difficult to trace the lord's duties and privileges back to the original *mund* or *patrocinium*. We have seen that the gesithcund man made a compact for the men of his household,[4] and thus exercised some corrective jurisdiction. A similar authority is referred to in the passage where men are forbidden to receive a runaway whom his lord has not been able to keep in order at home.[5] For certain offences his man owes him payments,[6] and he has a share in the *wer* for the death of his man,[7] and compensation from him who takes in his runaway man.[8] When cattle has been stolen the *hlaford* has his share of what is left when the *ceapgyld* has been paid.[9] In this last passage, however, we are dealing with territorial rather than with personal lordship, and a different problem is raised.[10] II. Cnut 42, refers to the lord's *mund bryce*; it is quite possible, as Mr. Chadwick suggests, that the lord's rights have developed from a primitive "house peace." The powers of the lord over his *geneat* are extensive; if he persists in refusing to pay *gafol* it is

[1] Vinogradoff, *Eng. Soc. in the Eleventh Cent.* p. 253.
[2] Af. 42, 5. [3] Vinogradoff, *Growth of the Manor*, p. 214.
[4] Ine, 50. [5] V. As. 1.
[6] II. Cn. 36 (Perjury). Duns. 6, 3 (Complicity with a stranger). I. Atr. 1, 7 (Neglect on the part of a *borh*). II. Cn. 42 (Ill-treatment of a priest). Ine, 39 (Running away). In Af. prol. 49, 7: "The world-lords receive a money *bot* for most crimes," "World-lords" may have a broad meaning and include the *gerefan*.
[7] Ine, 74. [8] Af. 37, 1. [9] I. Eg. 2.
[10] See below, Chapter V. pp. 111 ff.

probable that the lord will leave him neither his possessions nor his life.[1] The status of the *geneat* is, however, not certain; reference is, perhaps, made here to a jurisdiction over unfree or semi-free. The lord's command is an adequate excuse for non-attendance at the *gemot*,[2] but this does not prove that the lord had a court of his own. There are, however, as Maitland has shown, indications of the growth of private jurisdictions, but these will be considered later along with the Frankish immunity. The *landrica* of Edgar's and Æthelstan's laws is in all probability an immunist.

The general responsibility of the lord for his men is indicated in other passages besides the well-known one that states that no law may be got of lordless men.[3] The passage which most forcibly recalls Frankish enactments is Æthelstan II. 8: "And we commanded that if any landless man seek a lord (*folgode*) in another shire . . . that he lead him to folkright if he work guilt there, or else make *bot* for him." This is practically identical with the stray capitulum which Boretius attributes to Charles's reign.[4] "Et quia sunt nonnulli qui . . . non habentes res aut substantiam pro quibus constringi possint ideo malitias exercere non cessant: de illis nobis placet ut ipsi cum quibus manere videntur aut eos præsentent aut pro eorum malefactis rationem reddant." The lord holds his men in *fideiussio* or *borh*,[5] and is bound to pay the *wer* of any one of them whom he suffers to escape while under accusation.[6] He is not to impede

[1] IV. Eg. 1, 1, 2. [2] I. Eg. 7, 1. [3] II. As. 2.

[4] I. 218, 11. An equally close analogy is presented to the passage from Ine's laws which has been frequently referred to, by a capitulary of 862. Any borrowing in this instance must be on the Frankish side. 866. II. 309. "Si vero servus hoc fecerit sententiæ capitali subiaceat, et dominus omnia similia restituat, *quia servum suum non correxit nec custodivit ut talia non perpetraret.*" Cf. The gesith's "compact" of Ine, 50.

[5] III. As. 7. I. Atr. 1, 10. [6] I. Atr. 1, 11.

the course of justice,[1] and if accused of connivance with any of his men he must clear himself with five oath-helpers.[2] He must pay the alms penny if his men will not.[3] It may be noted that all these passages are of fairly late date. They appear, like the similar Frankish capitularies, to indicate a surrender of responsibilities on the part of a weakening central government.

The services owed by a man to his lord are nowhere fully set forth. We have seen that he might take a fore-oath for him, and that he served him in the king's hall. The account given in the Rectitudines of the services owed to a lord, applies rather to the semi-free, and is to be compared with that of the *Capitulum in pago Cenomannico datum*, rather than with any account of the duty of the vassus. It must be remembered that in Francia the status of the vassal varied infinitely, and that "domanial" and seignorial rights were alike in origin to a considerable extent and tended to merge in one. The process of feudalization was at work at either end of the ladder. If the whole feudal structure was erected on the basis of patronage and protection, the relations of the lord and his humbler dependents are not irrelevant.

It is not easy to arrive at any definite conclusion with reference to the relation of seignorial institutions in the two countries. The analogies are close and constant, but they seem to rest on an universal basis, and it appears equally impossible to prove that Charles Martel borrowed ideas from the Northumbrian kings, or that Alfred, Edward or Æthelstan deliberately copied the Frankish system of vassi dominici and royal benefices.[4] As regards

[1] II. As. 3. [2] I. Atr. 1, 12. [3] VII. *a* Atr. 5.

[4] It is true that the use of the word *beneficium* in the English charters is a strong argument in favour of external influence. As the word, however, is found in very early Frankish formulae, and is used in the *precaria* grants themselves, it may have been taken over when the *laen* was devised in imitation of the *precarium*, that is, long before the time of Alfred.

the legal relation of lord and vassal it is possible that the transference of responsibility to the lord was to some extent counterbalanced in England by the growth of the system of *frithborh* among equals. There are fewer indications here than in Francia of private jurisdictions apart from royal grant. None of the similarities in detail noticed above are inconsistent with the separate development of institutions in the two countries.

In the matter of land tenures, however, a transfer of legal practice seems more probable. The landbook has been borrowed from without; the methods of booking land might well be borrowed also. But if so, as has been shown, the first borrowing must have taken place during the Merovingian period, and the later developments might well have taken place without the operation of any exterior influence.

CHAPTER V

THE IMMUNITY

We have considered patrimonial or domestic justice with its possible developments and limitations in Francia and England; it remains to compare the seignorial justice that rests on royal privilege—the immunity—in both countries. "It is highly probable," says Maitland, "that the English immunity is not independent of the Merovingian immunity; still . . . it is a significant fact that two different formulas should be equally open to the blame of not deciding just that most important question which according to our ideas they ought to decide." [1] This is the question of the judicial rights of the immunist; the precise meaning of the terms of the royal grant which creates the immunity.

1. *The Frankish Immunity.*

The origins of the immunity are to be found in the Roman period.[2] Under the later Empire the exemption enjoyed by the lands of the fisc from both financial burdens and judicial interference is extended, both

[1] *D.B. and B.* p. 278.

[2] Brunner, Waitz and M. Flach uphold the theory that the immunity is a development of the royal *mund;* the protection of certain persons, most often connected with the Church, from disturbance and harm. It is possible that the charter of *mundeburd*, which sometimes includes exemption from taxes (*v.* Flach, I. p. 107), and which continues to be granted alongside that of immunity till the reign of Lewis the Pious (Waitz, IV. p. 291; Brunner, *R. G.* II. p. 55), may have influenced indirectly the position of the immunist. M. Kroell has, however, pointed out the essential contrast between the two institutions; the *mund* carries with it the king's protection against all men, whilst the immunity charter is directed solely against the invasion by the public officials of the immunist's territory. Kroell, pp. 87 ff.

formally and informally, to the lands of *potentes*. These traditional privileges, persisting under the Merovingians, are seriously threatened by the growing powers of the local representative of the central authority—the count. To safeguard their lands against the aggressions of the count, the magnates seek and obtain from the king diplomas of immunity, forbidding all public officials to enter their domains, and putting them in immediate relation with the king.

The immunity is found with frequency as early as the seventh century,[1] and in the Formulae of Marculf [2] there are signs that laymen, as well as clergy, obtain these privileges. The overwhelming majority of grants extant, however, are those made to churches and monasteries, and in the Carolingian period the institution is practically confined to the Church,[3] the disappearance of the lay immunity being chiefly due to the development of the benefice.[4]

The immunity is pre-eminently a royal privilege. None but a royal command is sufficient to keep the royal officials from entering a territory. The grant is made, as we have seen, both to laymen and to churches: "potentibus et ecclesiae" [5]—but in the case of a church the grant is made to one person,[6] not to a community. The abbot is regarded as proprietor of the lands of the monastery.

The form taken by the immunity grant is well known. A command is addressed to the count and his subordinates not to enter the land of the privileged person, "ad causas audiendum vel freta exigendum nec mansiones aut paratas

[1] Fustel de Coulanges, *Origines du système féodal*, p. 341.
[2] Marc. I. 14; I. 3, "loca ecclesiarum aut cui volueris dicere."
[3] Kroell, p. 156. [4] *Ibid.*, p. 161. [5] 614. 22. 14 ?
[6] Marc. I. 3. "apostolico viro illo . . ." It must be noted that the privilege is conferred on the holder of the land, not on the land itself. Kroell, p. 95.

faciendum nec fideiussores tollendum nec homines ipsius ecclesiae de quaslibet causas distringendum nec nulla redibutione requirendum : "[1] and in many cases it is added that whatever within the immunity might have gone to the fisc by way of profit shall now go to the immunist.[2] There is little doubt that the positive right is implied whenever the corresponding exemption is granted;[3] the immunity grants were for the benefit of the holder, not of the men who lived on the immunity.

These rights are thus financial to a considerable extent; the right of making requisitions and exacting lodging was one of the main sources of royal revenue. But beside these are some that seem to depend on judicial procedure. The *fredum* is the judicial fine which corresponds to the English *wite;* and the right to exact this implies the right to hold a court which can impose it. No one is likely to hold a court of which another reaps all the benefits;[4] and the right of a lord to claim at the public courts a part of the profits of justice in cases where his own men are concerned appears to have been as exceptional in Francia[5] as in England at a later date.[6] Brunner[7] sums up the controversy as to immunist jurisdiction, and shows that the majority of writers favour the theory of separate immunity courts which has been so ably set forth by M. Beauchet.[8] The passage which proves almost

[1] Marc. I. 4.

[2] Mühlbacher, *D. K.* pp. 73, 96, 131. Cf. the unique grant of 808 (p. 277) of profits of justice without an immunity, marked, however, as of doubtful authenticity.

[3] M. Kroell draws a distinction, for the Merovingian period, between the immunities of the east and the west. In the west the immunist collected the dues and paid them over to the king; in the east he kept them. In the Carolingian period all alike keep the dues. Kroell, p. 115.

[4] *D. B. and B.* 277.

[5] The diploma to Piacenza, referred to above, may be an example of such a privilege. Mühlbacher, *D. K.* p. 277.

[6] P. and M. I. p. 570.

[7] Brunner, *R. G.* II. p. 298, note 55.

[8] Beauchet, pp. 418–85.

conclusively the existence of such courts occurs in a diploma for Trier of 772.[1] "Nec homines eorum per mallobergiis nullus deberet admallare aut per aliqua ingenia praesumat condempnare neque freta vel thelonea exigere . . . sed in eorum privatas audientias agentes ipsius ecclesiae unicuique de reputatis condicionibus directam facerent et ab aliis simulque perciperent veritatem." The men of the immunity are exempted from the *mallus*,[2] and *audientiæ* are held by the *agentes* of the immunity. The same word is used of the courts held by the *iudex* on the royal vill;[3] and the fact that the lands of the fisc set the pattern for all immune territories would of itself lead us to expect to find jurisdictional privileges in the immunity.[4]

So much of the character of the immunity and of its history down to the Carolingian period may be learnt from a study of the diplomas themselves.[5] The capitularies indicate the position of the immunity in the general scheme of Carolingian government. Two Merovingian capitularies refer briefly to the immunities, reaffirming their privileges,[6] but under Charles the Great there is a series of regulations, culminating in the *Capitulare legibus additum* of 803,[7] which recognize the position

[1] Mühlbacher, *D. K.* pp. 95 ff. Cf. Charter for Metz, 775. p. 131.

[2] Note also a diploma of 847, quoted by M. Beauchet on p. 444. "Si vero in eadem immunitate reus repertus fuerit vel ductus, . . . a nemine distringatur nisi a jam dicto loci mandatario, nisi forte exinde latronis fuerit eiectio"; that is, one who has committed theft outside the immunity must be given up to the public judge. The various regulations as to the appointment of good advocates in the capitularies are only explicable if the advocates have judicial functions.

[3] 800 ? 88, 56.

[4] Kroell, p. 134.

[5] From the "Capitula Remedii" we learn that in some instances at least the immunist possessed legislative powers. *V.* Kroell, p. 266, and *M. G. H. Leges V.* (folio ed.) pp. 441–4.

[6] 584–628. 19, 11; 614. 22. 14, "salva emunitate domnorum, quod ecclesiae aut potentum vel cuicumque visi sunt indulsisse pro pace atque disciplina facienda."

[7] 803. 113, 2.

and privileges of the immunities, and at the same time, subordinate them effectively to the royal power. As in the case of seignorial relations, Charles the Great appears to attempt to check the harmful tendencies of the main development of his period by according governmental recognition, and imposing legal restrictions.[1] To quote Flach, "Si Charlemagne enrayait d'une main la formation de la féodalité qui, avec une aristocratie livrée à elle-même, se serait peut-être constituée dès le huitième siècle, il travaillait de l'autre à en perfectionner les organes." [2]

The capitularies are concerned rather with limiting than with defining the rights of the immunities. General commands are given repeatedly that the rights of the immunities be respected, but there is no statement as to what these rights are. We find, however, what they do not include.

The general duty of watch and ward is owed from men on the immunity, and they are bound to assist in the general work of bridge and road mending.[3] The men on the ecclesiastical immunities are allowed, however, to work under their lord's direction and not with the other *pagenses* under the count's immediate control, unless they get behindhand with their task.[4] Few of the diplomas refer expressly to these universal duties, in this respect presenting a striking contrast with the English land-books. In the Charter to Metz, however, for 1775, we find the clause: "Illud addi placuit scribendum, ut de tribus causis: de hoste publico . . . et wacta vel pontos

[1] M. Kroell considers that it was the deliberate policy of Charles the Great to strengthen the immunity, as part of a system of "administrative deconcentration." Kroell, p. 249.

[2] Flach, I. p. 124. Cf. Dr. Seeliger in *Hist. Viertelj.* (1906) p. 582.

[3] 782/6. 192, 4; 820. 294, 3; 822/3. 319, 11. Cf. also 844. II. 259, Prologue and cap. I.

[4] 787 ? 197, 7.

componendum, illi homines bene ingenui, qui de suo capite bene ingenui immunes esse videntur, qui super terras ipsius ecclesiae . . . commanere noscuntur, si in aliquo exinde de istis tribus causis neglegentes apparuerint, exinde cum judicibus nostris deducant rationes . . . in reliquo vero . . . sub emunitate ipsi sint conservati." [1] The object of this clause is to preserve judicial rights to the king and to support the administrative rights of the count; [2] it is not directly stated that the men on the immunity owe the three services mentioned, but the inference is unmistakable. It is thus highly probable that these three duties were reserved in all grants of immunity, unless exemption were expressly granted.[3] Reference may be made to such exceptions in a memorandum of 865, which orders the missi to discover who owe *paraveredae*, bridge duty, and the like; [4] we have a few instances of exemption. Waitz quotes a charter of Lewis the Pious [5] in which performance of the duty of *tuendum*—probably *wacta*—exempts men from all other public duties. Grants such as are found of *banni* and *aribanni* [6] suggest exemption from host duty, since the authority who exacts the fine has the power of dispensing from the duty.[7] The history of the privileges of Corvey is of interest in this connection, the convent having had its exemption from military duty granted by Lewis the Pious and confirmed by Lewis the German and Charles the Fat; the

[1] Mühlbacher, *D. K.* p. 132.

[2] Waitz, IV. pp. 33 ff.

[3] 825. 330, 2. "Liberi homines . . . quousque ipsas res possident, hostem et reliquas publicas functiones faciant. Quod si jussa facere neglexerint, licentiam eos distringendi comitibus permittimus . . nostro non resistente emunitate."

[4] 865, II. 94, 4.

[5] Waitz, IV. p. 629.

[6] Mühlbacher, *D. K.* pp. 87, 153, 195.

[7] On the other hand, such immunists are, in some cases at least, bound to pay over the heriban to the king after collecting it. Kroell, p. 111. See below, p. 136.

last, however, limiting the number of those exempt to twenty, in consideration of military exigencies.[1]

Exemptions from these public duties are as a rule of late date,[2] and indicate the advance of the disruptive tendency. Another duty which, it seems probable, had to be specifically reserved, was the rendering of the *dona annualia* [3] to the king. This was not included under the general head of the fisc dues from which the immunity was exempt, as the "gifts" were payable directly to the king and not to the count.[4] A list of monasteries of the year 817 shows how many had already gained such exemption as well as those who were exempt from military service.[5]

Another limitation to the rights of the immunist is frequently mentioned in the capitularies. Thieves [6] and other criminals [7] who have committed crimes outside the immunity, and runaway slaves [8] who take refuge in the immunity must be hunted down by the count. For a refusal to admit the count or his underlings the fine is 15 solidi for the first offence and 30 solidi for the second, whilst the third offence must be reported to the king.[9] It appears that later the count commands the advocate to present the fugitive before his tribunal without himself entering the immunity.[10] The judge of the immunity, therefore, had no jurisdiction over offences committed outside the immunity; but from the fact that

[1] Baldamus (pp. 46–7) gives numerous instances.

[2] Brunner, *R.G.* II. p. 295. Waitz, IV. p. 35. Kroell, p. 182. They are, however, so common by the end of the Carolingian period that an immunity grant is popularly held to involve exemption from military service. Kroell, p. 187.

[3] Waitz, IV. pp. 312, 316.

[4] Similarly the king's own right to *mansionaticos* and *paraveredae* was not surrendered when exemptions were granted from these duties under the count.

[5] 817. 350.

[6] 803, 113, 2, etc.

[7] 864, II. 317, 18; 825. 330, 2.

[8] 857, II. 292, 4.

[9] 803. 113, 2; 804/13. 181, 5.

[10] 873. II. 344, 3.

these passages expressly refer to such offences it might be gathered that the judge of the immunity had criminal jurisdiction within the immunity. On the other hand, in one Italian charter [1] criminal causes are reserved for the count's tribunal, and it has been shown that a capitulary which appears distinctly to state that the advocate has power of life and death over those who dwell on the lands of the immunity,[2] refers merely to the Church's right of sanctuary.[3] Criminal causes are, therefore, probably reserved for the count, together with those arising from neglect of the public duties mentioned above.

In civil cases, when a man from the immunity has done wrong to one without, the advocate becomes representative instead of judge. It is probably to an immunity that the *Capitulare de Monasterio S. Crucis* refers when it declares, "De caeteris vero quaestionibus, quas aut alii ab ipsis aut ipsae quaerunt ab aliis, secundum consuetudinem ante comitem vel vicarios eius justitiam reddeant et recipiant." [4] There is a distinction, however, between the free and the unfree; the freemen may themselves appear at the count's tribunal to defend themselves,[5] whilst the unfree, if not summarily punished by the advocate, are presented or represented by him at the public courts.[6] If a man of the immunity is the injured party it seems that if free he will seek justice himself at the count's tribunal, whilst if he is unfree the advocate will seek it for him.

[1] Charter for Novalese. 845. "Pro criminalibus culpis . . . non est licitum iudicare, ante comitem eiusdem loci iustitias reddant." Quoted Kroell, p. 213. Cf. Form. Imp. 43, "Nullus comes aut iudiciaria potestas eos de quibuslibet causis distringere praesumet, exceptis criminalibus causis."

[2] 810 ? 158, 1. [3] Kroell, p. 211. [4] 822/4. 302, 5.

[5] 787 ? 196, 5. "Ceteri vero liberi homines qui vel commendationem vel beneficium ecclesiasticum habent sicut reliqui iustitias faciant." At a later date the outsider may claim justice at the court of the immunity. Brunner, *R. G.* II. p. 301.

[6] 806 ? 211, 16.

It is not probable, however, that there was any simple or universal limitation of immunist jurisdiction. According to Dr. Seeliger,[1] it cannot be classified as equivalent to that of the centenarius or of the count; to the later *haute justice* or to the later *basse justice*. The significance of the Carolingian period for the history of the immunity lies not so much in the increased competence of the tribunal as in the acceptation of the institution as a part of the organization of the State.

Another limitation to the grant is made in favour of the king himself. Any charter of this period which renounces the royal right of entering the territory is to be regarded as spurious. As we have seen, the immunity was theoretically immediately dependent on the king, and justice might be sought directly of him. Some charters exclude the missi,[2] but as a rule these envoys of the Crown might enter the immunities.

The form of the grant is perpetual,[3] but it is usually renewed on the death of the grantor. That granted to the Spaniards of the March [4] is of interest, as it appears to secure to them a peculiar communal justice with duty of suit to the count's court only for "the greater causes."

Expressions are found which suggest that certain possessions had a right of immunity without a definite grant. We find that a right of immunity is granted to Corvey "talem . . . qualem omnes ecclesiae in Francia habent," and the language of the late capitularies suggests that every church must be an immunity.[5] This is pro-

[1] *Hist. Viertelj.* (1906) p. 580; (1905) p. 313. Thus over-definite limitations are set by Waitz, IV. p. 453; Brunner, *R. G.* II. p. 302.

[2] Mühlbacher, *D. K.* pp. 76, 91, 192.

[3] Marc. I. 3. "Tam presentis quam futuris temporibus . . . permaneat." Cf. also the references to *hereditarius jus* in the charter for a lay immunity quoted by M. Beauchet, p. 472.

[4] 844. II. 259, 1, 3.

[5] 865, II. 92, 2. "Ut ecclesiae Dei per totius regni nostri . . . sub nostrae immunitatis tuitione securae . . . permaneant." Cf. 869. II. 333, 1.

bably due to the great extension of immunities; there is no sign that such rights were ever held without express royal grant. An expression in the *Capitulare Haristellense* which has been taken to mean that the benefices of all royal vassals were *ipso facto* immunities [1] need not bear this interpretation. A late capitulary appears to indicate the existence of immune rights without an immune grant, the royal officials being resisted not only in immunities but in "cuiuslibet hominis potestatem vel proprietatem." [2] This passage appears to indicate the extension of seignorial rights to a considerable extent, and increases the probability of seignorial jurisdiction apart from immunity grants: its importance, however, may be exaggerated, as it is found only in Ansegis's collection. Some passages quoted by Waitz appear to set the question beyond doubt, at any rate in the case of ecclesiastical benefices. A passage from the works of Hincmar declares that the lands from which the vassals owe military service are under the royal immunity and ought to be defended by the king for the use of the Church.[3] A charter of Lewis the German grants to Saint Gall the same rights that other monasteries and benefices have.[4]

It seems probable, therefore, that rights similar to those conferred by an immunity charter were recognized alongside of the more regular immunities. The sources do not, however, indicate the existence of these unchartered franchises till late in the Carolingian period, for, as we have seen, the analogy of the vassus dominicus and the *iudex immunitatis* in the *Capitulare Haristallense*

[1] 779, 48, 9. "Ut latrones de infra immunitatem . . . presentetur . . . vassus noster, si hoc non adimpleverit, beneficium et honorem perdat, et qui beneficium non habet, bannum solvat." M. Beauchet thinks that an immunity grant always accompanied the grant of a royal benefice.

[2] 864, II. 317, 18. Cf. Flach, I. p. 103.

[3] Hincmar. Quoted Waitz, IV. p. 295.

[4] Quoted Waitz, IV. p. 295.

cannot be accepted as proof that the judicial rights of the vassi dominici were equivalent to those of the immunists.[1]

The official at the head of the immunity is the *advocatus*, also called the vicedominus on ecclesiastical immunities. His duties, as we have seen, are to represent the men of the immunity when necessary at the count's tribunal;[2] and to preside over the courts of the immunity itself.[3] The need for a lay representative and defender on the part of ecclesiastics had long before created a *defensor ecclesiae*,[4] but his importance is much increased by the judicial rights conferred by the immunity, and the lay immunist also has his advocate.[5] The importance of his position is indicated by the frequent references in the charters to the appointment of good advocates.[6] According to some passages they are to be appointed by the people and count.[7] Some of the charters give the immunist the right to choose his own advocate;[8] in one passage the missi elect him;[9] by one charter he appears to have been nominated by the king himself,[10] and in a capitulary he is called "advocatus noster."[11] The advocate is not appointed for life,[12] and limitations are set to his selection.[13]

These restrictions on the choice of an advocate are signs of the determination of the Carolingian kings

[1] See above, p. 79.

[2] 787 ? 196, 1: "per advocatum . . . causa ipsa ante comite vel judice veniat."

[3] 787 ? 196, 1: "(episcopus) faciat eum per advocatum iustitiam recipere."

[4] Brunner, *R. G.* II. p. 303. [5] 802. 101, 18a.

[6] 803. 93, 13; 802. 101, 18a; 790. 201, 3.

[7] 809. 151, 22; 805. 124, 12; 802. 210, 11.

[8] Waitz, IV. p. 469; cf. charter of 856. "Advocatus eorum quam ipsi monachi cum consensu nostro elegerint nostra vice eos adiuvet . . . et defendat." Cf. also 822–3, 319, 9. "Episcopus una cum comite advocatum elegat."

[9] 803. 115, 3. [10] Waitz, IV. p. 469.

[11] 826. 310. [12] 825. 326, 4. [13] 801/13. 172, 14; 801/10. 210, 11.

to keep an effective control on the administration of the immunities. The advocate is almost as much a representative of the royal as of the ecclesiastical power.[1] The most striking instance, however, of the royal concern for the immunities, is the *Capitulare legibus additum* of 803. Here a privilege which had been granted to a few isolated monasteries [2] is extended to all the immunities and given the sanction of law, not merely of royal authority. The man who infringes the immunity or does any violence within it pays 600 shillings.[3] From the charters we gather that of this composition one-third went to the fisc and two-thirds to the judge of the immunity.[4] We find this payment itself referred to at a later date by the name of "immunity." [5]

2. *The Anglo-Saxon Franchise.*

If it is difficult to disentangle the personal and territorial elements in the history of seignorial privilege in Francia, it is impossible in England. Professor Vinogradoff indicates four distinct "Saxon roots of the manor," [6] and three at least of these must be examined to find the equivalent of the Frankish immunity. If bookland supplies a parallel for the benefice, it also has points in common with the immunity; and the soke, and the position of the *landrica* must also be considered.

The difficulties of the problem are further increased by the fact that there is a far wider margin of uncertainty, both as to the facts themselves and as to their chronology, in the history of privileged private jurisdictions in England. One can venture to do little more than tread cautiously in the footsteps of Maitland.

[1] Kroell, p. 264

[2] Mühlbacher, *D. K.* p. 173 (779. St. Marcel), p. 192 (782. St. Martin of Tours).

[3] 807. 113, 2. Brunner, *R. G.* II. p. 297, points out that this is the wergeld of the invading count. Cf. Form. Imp. 15.

[4] See note 6. [5] 832. II. 64, 11; 876. II. 101, 3.

[6] Vinogradoff, *Eng. Soc. in the Eleventh Cent.* pp. 340–5.

In the second section on "Sake and Soke" in *Domesday Book and Beyond*,[1] Maitland suggests that the private jurisdictions which existed to so great an extent under Edward the Confessor were no innovation, but are to be traced back to the tenth and perhaps even to the eighth century. Traditions and formulae alike bear the signs of age.

The chief and almost the only source of our information on the subject is to be found in the land-books. The diplomatic contrast between the English and Frankish charter of privilege is marked; the command to the officials not to enter the lands of the immunist is lacking in the English book, whilst stress is rather laid on the exemption from fiscal burdens. There is no one official type of charter; the forms vary locally, and thus there is no official collection of formulae comparable to the Frankish *Formulae Imperiales*. Nor is there any unambiguous reference in the laws. There is, in fact, no one name to correspond to the Frankish *emunitas*,[2] and thus from the first it is apparent that the position of these English liberties in the national system differ considerably from that of the immunities, whose rights are recognized and enforced by legislation.

The English grants are, like the Frankish, made almost exclusively in favour of the Church, and they appear to originate in financial privileges. An early example is the grant of Æthelweard of the Hwicci in 706.[3] "Ut ab omni publico vectigali, a victu, ab expeditione, ab opere regio sit libera, tantum ut aecclesiae praefatae beatae Mariae . . . cuncta quae in eo loco ad aptum et ad utilitatem pertinere possunt serventur." This grant stands almost alone at this date. It is particularly remarkable

[1] *D. B. and B.* pp. 258 ff.
[2] *Freols* is used in some late charters, but is in no general use.
[3] B. 116.

in its apparent reference to military duty, but *expeditio* here may be taken to mean no more than riding duty. There is no sign of exemption from judicial dues such as the Frankish *freda*, however; the privilege appears to be merely financial. A general grant of exemption from *publicis vectigalibus* is made to the monasteries and churches of his kingdom by Æthelbald of Mercia in 749,[1] the Trinoda Necessitas being reserved. Two Kentish grants of 759–765 [2] concede to the privileged lands all the tribute which was given thence to the kings. It is in 767 that the first reference to the profits of justice is found in a grant by Uhtred of the Hwicci,[3] to a certain Æthelmund *fideli meo ministro*. The land is freed from all public tribute, small and great, and all services of king or prince except the Trinoda Necessitas, and it is added, "Interdicimus ut si aliquis in hac . . . terram aliquid fores furaverit alicui solvere aliquid nisi specialiter pretium pro pretio ad terminum, ad penam nihil foras." The simple payment of the *bot*—the *angild*—is to be made *ad terminum*, and no other penalty without. This appears to imply that other payments may be made within; and it is to be noted that the theft in question has been committed without the territory. Again, the fact that the payment is to be made *ad terminum*, suggests that no court could be held on the land in question; or at least that the lord could represent at justice any person on his land. A grant by Offa of the preceding year is endorsed in 799–802 by Pilheard, *comis regis*.[4] The land, granted in this case to an abbot, is freed "ab omnium fiscalium redituum operum onerumque seu etiam popularium conciliorum, vindictis nisi tantum praetium pro praetio." The Trinoda Necessitas is again reserved. The reference to the popular councils suggests forcibly freedom from suit to shire and hundred, which,

[1] B. 178. [2] B. 192, 194. [3] B. 202. [4] B. 201.

as Maitland points out,[1] is a duty analogous to that of *fyrd sokn*. Even apart from the fact that we have no data as to the existence or constitution of such popular courts in Mercia, it would be dangerous to press the meaning of this isolated phrase. Other instances [2] are found of the grant of *angild—singulare pretium—pretium pro pretio*—coupled with the provision that no other external payment is to be made.[3] *Angild* is referred to as a fourth *causa* with the Trinoda Necessitas.[4] The first example of the grant in English is found in 883, in a charter of the ealdorman Æthelred of Mercia for Berkeley.[5]

It is to be noted that only Mercian grants are found before the ninth century. The majority of early charters of all kinds now extant are Mercian, but if the foreign land-book became common more speedily in Mercia than in Wessex, it is quite possible that this particular form of privilege was also developed earlier in Mercia. The first West Saxon charter that refers to the *angild* is granted by Egbert in 835,[6] though there are general grants of privileges [7] of 825, 826, and 828, in which the Trinoda Necessitas is reserved and in one of which *furis comprehensio intus et foris* is granted.[8] In the charter of 835 the general term *witereden* [9] is used for the judicial payments that are not to go out; we have here a parallel for the Frankish *freda*. The general services of entertainments, conveyances, etc., from which the grant frees the land, are very similar to those referred to in the

[1] *D. B. and B.* p. 274.
[2] B. 351, 357, 368, 370, 400, 455, 487.
[3] B. 351, 368, 370, 487. [4] B. 370, 487.
[5] B. 551. "Æghwelces þinges to freon ge wiþ cyning, ge wiþ ealdorman, ge wiþ gerefan æghwelces þeodomes lytles and micles, butan fyrd socne and fæsten geworce and brycg geworce and angyld wiþ oðrum and noht ut to wite."
[6] B. 413. [7] B. 389, 390, 391, 393, 395.
[8] B. 395.
[9] Found also in B. 447 (general exemption by Æthelwulf of the tenth *mansio* of all Church land); B. 544.

Frankish charters; in one case the foreign expression appears to be used.[1]

Egbert's charters, then, appear to prove that the profits of justice were granted out to monasteries and to private persons by the beginning of the ninth century. The right that "nought should go out to *wite*," is the right to receive the *wite*; and some charters, as Maitland shows,[2] seem to indicate that the *wite* is exacted within the land by the authority who pays the *angild* or sees that it is paid. Freedom against the ealdorman and the gerefa [3] may mean merely freedom from performing services for them; but may include freedom from attendance at their courts, or subjection to their jurisdiction, and correspond to the *absque introitu indicum* of the Frankish immunity. Again, the right of *furis comprehensio* appears to indicate judicial rights, of however summary a character. The clearest evidence is given by a charter of 904 in which Edward concedes to the Taunton men of the Bishop of Winchester the same rights as are enjoyed by those who dwell on the lands of the fisc, and to the bishop judgment in secular matters as it is exercised in matters pertaining to the king.[4]

It is only with the grants of Edward the Confessor and the statements of Domesday,[5] that certainty as to the customs of the English immunity can be reached. Here it is found covering whole hundreds, as in Francia several centenae might be included under an immunity. From

[1] B. 395. *Parafrithis* = *paraveredis* in Francia. Found as *palefridis* in B. 413; *parvaredis*, B. 544.

[2] *D. B. and B.* 275, 292. Note especially B. 357. "Etsi malus homo in aperta scelere tribus vicibus deprehensus sit, ad vicum regis reddatur."

[3] B. 551, quoted above.

[4] B. 612. "Et omnia saecularium rerum iudicia ad usus praesulum exerceantur eodem modo quo regalium negotiorum discutiuntur iudicia."

[5] See, for instance, K. 1342. Dd. I. 172b, 1.

these lands the sheriff is excluded, and they owe no suit at hundred or shire; but as in Francia criminal causes were reserved for the count's tribunal, so the kings of England reserve to themselves six or eight "pleas of the crown." [1] It is difficult to believe that these extensive rights are of mushroom growth; Maitland's theory seems the only reasonable explanation of the state of the country in the eleventh century.

Maitland refers to the lord of an immunity certain passages in the laws which mention the *landrica* [2] or *land hlaford*. These all belong to Æthelstan's reign or later. The *land hlaford* of VI. As. 1 [3] appears to be the owner of bookland to which full judicial privileges have not been conceded,[4] but later passages give the *land hlaford* a semi-official position. He takes half the fine for non-payment of tithe, whether the offender be a king's man or a thegn's.[5] He shares with the hundred the goods of a thief after the *ceapgild* has been paid,[6] and he shares with the hundred if a beast from a distance has been brought in without notice given, keeping it as his own in some cases.[7] He takes *wedd* from the *tihtbysig*, jointly with the wapentake,[8] and from a thief jointly with the king's *gerefa*,[9] and receives payments from men who avoid the ordeal,[10] who own cattle not in *borh*,[11] or who maintain heathendoms.[12] If he fail to do his duty the fine falls to the king.[13]

These laws assume, as Maitland says,[14] that wherever

[1] P. and M. II. 453. Vinogradoff, *Eng. Soc. in the Eleventh Cent.* p. 112.

[2] Dr. Liebermann also; he translates as a rule by *Immunitätsherr.*

[3] Dr. Liebermann translates "obere Grund-herr."

[4] The fact that all bookland was not immune is illustrated by I. Atr. 1, 14. The gerefa collects the king's wite from the bookland; nothing goes out as *wite* from the immunity.

[5] II. Eg. 3, 1. [6] III. Eg. 7, 1. [7] IV. Eg. 8. 11.
[8] III. Atr. 3, 2. [9] III. Atr. 7. [10] III. Atr. 4, 1.
[11] Northu. 49 (1028–1060). [12] Northu. 54. [13] Northu. 59.
[14] *D. B. and B.* p. 286. Cf. Vinogradoff, *Growth of the Manor*, p. 216.

an offence is committed there will be a *landrica* to receive payments. This would indicate a considerable extension of the immunity, but as there were certainly lords of half-hundred and hundred immunities, and much bookland was under immunity, it is not an impossible explanation. But for the fact that the *landrica* is in one instance[1] coupled with the king's gerefa, the word might be explained as a paraphrase for the royal official; as it is, these passages must be taken as the public recognition of extensive private financial and judicial rights[2] in territorial lords, whether holding land by book or not, and thus they may be said to offer a parallel to the passages in the capitularies which define the legal position of the immunity.

The *landrica* does not make his appearance till well on in the tenth century, and the great extension of the immunity in England probably belongs to the period when the royal power is weakening and the great ealdormanries are being built up. We have seen, however, that the earliest examples of grants of sake and soke—if they may so be called—belong to the eighth century. If foreign influence, therefore, is responsible for their existence, it is Merovingian, not Carolingian, and it comes to Wessex by way of Mercia rather than directly from Francia. Yet the fact that Egbert, who spent at least three years overseas, is the first of West Saxon kings to make grants of this nature, suggests that he may have been influenced by what he had gathered there of the place of the immunity in the Frankish political system.

Beside the territorial jurisdiction of the thegn holding bookland and the *land hlaford*, the grants of sake and

[1] III. Atr. 7.

[2] There does not appear to be any parallel in England for the immunist legislation of the Capitula Remedii; for the customs of Oswaldslaw do not deal with criminal law.

soke created a personal jurisdiction which cuts across the territorial immunities, "keeping some people out of them, and joining other people to them in spite of their place of abode"; [1] the soke over persons which added so much to the difficulties of the compilers of Domesday Book.[2] From Domesday Book it appears that the right of soke or jurisdiction over men apart from their lands, may be possessed by the king, by magnates or by communities, and may be divided between two lords,[3] whilst there are cases of men whose soke goes about with them, so that they can seek justice wherever they please. We have seen that the Frankish immunity was conceded to a person, not to a territory,[4] and have noted instances of benefices held from one lord by the vassal of another lord,[5] but this last irregularity seems to be dying out, and there is nothing in Francia parallel to the entanglements of personal and territorial relationships of Domesday England.

To come to matters of detail; in both countries the grant is made by the king as a rule. There are examples, however, in England if not in Francia, of grants made by great men, and in many cases it is clear that they are regranting privileges which they have gained from the crown. In some instances the consent of the king is referred to in the body of the charter. There is no sign that these grants needed to be confirmed after the death of the grantor; old charters are brought forward as sufficient proof. As Brunner [6] has indicated in his history of the charter, the position of the English book is unique in its intrinsic value. There are a few instances where grants are confirmed by later kings, but in such cases

[1] Vinogradoff, *Growth of the Manor*, p. 215.
[2] *Ibid.*, *Eng. Soc. in the Eleventh Cent.* p. 126.
[3] *Ibid.*, p. 125.
[4] Kroell, p. 95. See above, p. 101. [5] See above, p. 74.
[6] Brunner, *Rechtsgeschichte der Urkunde*, 1880.

the confirmation is frequently no more than an endorsement of the old book.

The holders of the immunity are as a rule ecclesiastical, but there are instances of grants being made in favour of thegns or ealdormen,[1] as in the case of Frankish laymen in the Merovingian period.

The similarity and the difference in the terms of the grant in the two countries has been already indicated; the like nature of the services from which the immunist is exempt, the possible exemption from shire and hundred as from *mallobergiis;* the reservation of the payment for crimes committed outside the land; and, on the other hand, the absence in England of the formula forbidding the royal officials to enter the immunity. We may note in this connection the cases, which, according to Cnut,[2] are reserved for royal judgment, unless the king will grant them to any man. Maitland[3] sees in this clause an attempt on the part of a strong king to regain rights that his predecessor had been surrendering over readily. The inclusion of *fyrdwite* among these pleas that might be granted out is of interest, for whilst Domesday gives instances of delegated powers of this nature, there is only one early charter extant, which expressly concedes freedom from the Trinoda Necessitas.[4] Compared with the later Carolingians the West Saxon kings seem to have held more firmly to their right of enforcing military service, though it is difficult to institute a fair comparison when in all probability many charters have been lost on both sides.

[1] B. 202, 438, 455, 557.

[2] II. Cn. 12.

[3] *D. B. and B.* p. 282.

[4] Crawford charters, p. 6. Athelstan to Crediton. 930. "Ut illa eam sine expeditione, profectione arcis pontis constructione omnique regalium vel secularium tributorum exactione, liberaliter . . . habeat." Cf. B. 240. "Ut nec pontem nec arcem facere debeant." Kemble, however, marks these words as later interpolations. They do not occur in the oldest MSS. of this charter.

There is no worldly sanction attached to the keeping of these charters comparable with the fine of 600 solidi that guards the Frankish immunity. An anathema is a sufficient defence. Nor, on the other hand, does the gerefa of the lord of an English immunity appear to occupy a position of such public importance as does the Frankish advocate. It is possibly to the gerefa on some such immunity that the tract *Be Sceadwisan Gerefan*[1] refers, but this is a private treatise, and no state enactment. It is, again, possibly the gerefa of an immunity who is allowed to take an oath for his lord[2] as to the character of the lord's men. These are, however, late passages, and even with their assistance we cannot find an office either so definite or so important as that of the Frankish advocate.

On the whole, then, we incline to think that whilst the English immunity may very possibly have owed something to the Frankish immunity at the outset, the Church here also being a ready means of connection, the later developments of the institution in this country were independent of foreign influence.

3. *The Lands of the Fisc: a Comparison of De Villis and Be Sceadwisan Gerefan.*

Whilst it has been denied by some writers[3] that the royal estates in Francia possessed, *ipso facto*, immune rights, the sources appear unequivocally to connect the demesne vills with the immunities of other men. Runaways must be delivered up from the lands of the fisc;[4] bad coins are to be rejected there as in the other immunities;[5] services must be performed from them as from

[1] Liebermann, p. 453; see below.
[2] I. Atr. 1, 2; II. Cn. 30, 1.
[3] Beauchet, p. 454. 857. II. 292, 4.
[5] 864. II. 314, 8. "[Et in omnibus civitatibus et vicis et villis tam nostris indominicatis quam et in his, quae de immunitate sunt . . . denarii . . . non nisi meri et bene pensantes accipiantur."

other immunities;[1] and their rights are to be respected similarly.[2]

Everything appears to bear witness to the antiquity of this immunity;[3] indeed, there is little doubt that the privileges of royal lands set the pattern for other privileged lands;[4] and that the origin of the immunity is to be sought in an extension of the rights of the fisc to the property of private persons.

The royal vills are sometimes granted out as benefices.[5] It does not appear that the privilege is attached to the land, for in such instances the immunity is matter for a separate grant.[6] In England also the kings make grants from their own lands, but it is not clear whether, in the earlier period, the privilege requires a grant or if it attaches to the land itself.

In both countries the royal privilege appears to set the standard for grants to other men—"the king himself is the first of all immunists."[7] Thus the Council of Mainz declares that the immunities of the Church ought to be "sub defensione regis sicut propriae sunt hereditates";[8] and Edward the Elder,[9] as we have seen, grants to Taunton privileges such as the king's men have and judgments such as are held for the king's business; whilst a later charter[10] makes land "swa freols on callan þingan eall swa ðaes cinges agen innland."

It is thus worth considering the administration of the royal vills as set forth in *De Villis*,[11] and their relation to the national system. Into the economic side of the

[1] 820. 294, 3. "Qui pontes faciunt, aut de immunitatibus aut de fiscis."
[2] 864. II. 313, 5.
[3] Waitz, IV. p. 289. Brunner, *R. G.* II. p. 287.
[4] Brunner, *R. G.* II. p. 299.
[5] Ann. Bert. 858. "Distribuens comitatus, monasteria, villas regias atque proprietates."
[6] Brunner, *R. G.* II. p. 292.
[7] *D. B. and B.* p. 276.
[8] 847. II. 178, 6.
[9] B. 612.
[10] K. 821.
[11] 800 ? 83–91.

capitulary, as of the whole question of seignorial rights, it is, of course, impossible to enter. The political significance of the capitulary is, however, considerable.

It represents a determination on the part of the central government to hold fast to the fiscal rights of the crown. The king was largely dependent on the vills for maintenance;[1] they furnished probably the greater part of his income. Thus the note of the capitulary is struck in the first clause: "Volumus ut villae nostrae, quas ad opus nostrum serviendi institutas habemus, sub integritate partibus nostris deserviant et non aliis hominibus." The *ad opus nostrum* of the *Capitulare Aquisgranense*[2] runs through this capitulary also like a refrain. It is in all probability based on an examination into the lands of the fisc, of the results of which one example is given in Boretius;[3] and thus may be viewed as a distinctly political measure.

On the other hand, it is not cast in the formal mould of a capitulary. It is not only lacking in any logical arrangement, being among the most incoherent as among the longest of the capitularies; but it has no superscription or date, and no reference to the king or emperor. But for palæographical evidence, its date would be even more doubtful than it is now. It has hardly the character of a public document. Dr. Gareis[4] suggests that in it we have a reflection of the aims and policy of Ansegis, servant and missus of Charles from 807 on, rather than of Charles himself, on whom Gibbon poured his scorn for concerning himself over "the care of his poultry and even the sale of his eggs."

[1] 832. II. 64, 6. "Ut inquirant missi nostri villas et cortes, unde regis expensa ministrari solita sit . . . et quae in transitu domni imperatoris serviri debent, vel missis transeuntibus necessaria ministrare."

[2] 801–813. 171, 5, 6, 8.

[3] 810 ? 250–256.

[4] *Germanistische Abhandlungen zum LXX Geburtstag Konrad v. Maurers*, Göttingen (1893), p. 236.

Informal as *De Villis* is, however, it has more of a public character than the small treatise *Be Sceadwisan Gerefan*,[1] its nearest parallel in English. The *gerefa* of this document occupies a position similar to that of the *iudex* or *major* of *De Villis*. Directions are given for the management of a great estate on the best lines. Dr. Liebermann dates the document at about 1025, and points out that it not only follows on in the same manuscript with the *Rectitudines Singularum Personarum*, but that it is complementary to it, being written with the same object and scope and in a similar style. He considers that the lord of the gerefa is probably not the king, nor an ecclesiastic, but some great thegn holding bookland from the king.

The similarity between the two documents consists in the fact that they are both directions to the manager of an economic unit with a view to the profit of his lord, the owner of the estate in question. The differences are, however, numerous, and are readily perceived.

Gerefa is mainly if not solely concerned with private property. Though it is highly probable that the greater part of the regulations it contains apply equally to royal and to private estates, there is nothing to indicate that the king is the lord for whose interests the gerefa is to care. On the other hand, as we have seen, *De Villis* deals solely with the property of the fisc.

The legislative character of *De Villis* again, though it is far less formal than many of the capitularies, sets it on a different footing from *Gerefa*, where the optative is preferred to the imperative, and the personal note of the writer is apparent.[2] "It is difficult to say everything which he must remember who holds the office. . . . I have set forth according as I could; let him who can do better declare it."[3]

[1] Liebermann, pp. 453 ff. [2] Gerefa, 4. "I teach." [3] *Ibid.*, 18, 19.

The *villa* is evidently far more complicated than the *tun*. A hierarchy of possibly four ranks is traceable: the *iudex*, the *major*, the *magister* and the *iuniores*.[1] There is no sign of any official below the *gerefa*, unless his *hyrmen* have such a position.[2] There are also apparently more social grades in *De Villis*.[3]

The powers of the *iudex* are considerably more extensive than those of the *gerefa*. It is possible, indeed, that only the larger *villae* have a *iudex*, and that the *major* is normally the chief official, for certain passages appear to indicate that the *iudex* may have more than one vill under his control.[4] The *iudex* has control of the agricultural and industrial[5] work of the vill. In this, apparently, the *gerefa* is his equal; there are no signs of the interference of any other. In his case, however, the limitation of old custom is added.[6] The *iudex* is also guided by command or custom,[7] but within the vill appears to be omnipotent. His rights are not merely administrative; he receives *censa* on behalf of the king;[8] pays tithe from the vill, and keeps and renders full account to the king.[9]

His judicial powers are also defined. He is commanded to hold *audientiae* frequently,[10] he receives *freda* for the king,[11] and he is commanded to keep peace and order.[12] The ordinary officials of the country have no footing in the vill. If a slave has to seek justice without,[13] he is supported by his *magister*. Theft and homicide are

[1] De Villis, 10, 26, 29, 59, 60.
[2] Gerefa, 6, 7.
[3] Franci, 4. Fiscalini, 50. Servi, ingenui, 52. Servientes, 39. Centeni (unfree), 62. Rect. Sing. Pers. mentions the *gebur*, the *cotsetla*, the *ceorl* and the *theow*; and also cowherds, etc., who may be compared with the *falconarii*, etc., of De Villis.
[4] De Villis, 5, 17, 24.
[5] Gerefa, 16; De Villis, 45.
[6] Gerefa, 1.
[7] De Villis, 7.
[8] *Ibid.*, 62.
[9] *Ibid.*, 6, 36, 55, 62.
[10] *Ibid.*, 56.
[11] *Ibid.*, 4, 62.
[12] *Ibid.*, 53.
[13] *Ibid.*, 29.

punishable within the vill,[1] whilst, as we have seen, this is not certain in the case of all immunities. Appeal appears to lie directly to the king, to whom *magister*, *iuniores* and *servi*, are all assured access.[2]

There is no certain evidence that the *gerefa* has any judicial power. The statement that he is to know lord's landright and folkright, as the wise men established it of old, and that he is to rule every one through lord's craft and folkright,[3] may imply that his knowledge will be used in deciding disputes and keeping peace and order. On the other hand, it reads somewhat like a command to keep by the old local traditions of agriculture, as time has established them. It seems impossible to state with certainty, as we can in the case of *De Villis*, that an organized judicial tribunal is set up. It is probable that summary justice at least would need to be within the powers of an official whose duties were so extensive; it is also possible that the holder of the land in question might have a *freolsboc* from the king.

While the count is not mentioned throughout *De Villis*, it appears that the queen and the king exercise control by means of special missi,[4] and that the butler and seneschal have some power in the vill.[5] The king's huntsmen and foresters[6] also may hold councils in the vill, by command of the king, probably dealing with the care of the forest land of the neighbourhood. With the *gerefa* there is no reference to outside control.

The officials of the vill are paid by benefices within the vill[7] or without. Dr. Seeliger[8] suggests that the benefice on the vill is no more than a *mansus* relieved from the duty incumbent on the generality. Throughout the capitulary the officials are urged not to neglect the

[1] De Villis, 4. Cf. 53. [2] *Ibid.*, 29, 57. [3] Gerefa, 1, 7.
[4] De Villis, 16, 5. [5] *Ibid.*, 47. [6] *Ibid.*, 47.
[7] *Ibid.*, 10, 50. [8] *Hist. Viertelj.* (1907) p. 342.

royal interests for the sake of their own, or to turn to their own use privileges and rights which belong of right only to the king. There is no unequivocal sign of the manner in which the *gerefa* is paid, but the reference to his own land suggests that he also is paid in this manner. "So shall a good official keep his lord's lands, let him do what he will with his own." [1]

The contrast between the aims and contents of the two documents is thus clear. *De Villis* is intended as a check on the growth of local independence, and an assertion of royal rights. *Gerefa* has no political aims; it is little more than an agricultural treatise. It is most improbable that it owes anything to the older document. Yet in spite of its non-political character it gives a picture of a large estate that may apply to royal, ecclesiastical or private lands. The value of the comparison depends mainly on the relation in each country between royal estates and those of other men. It appears probable, from *De Villis*, that the royal lands were especially privileged, whilst the reference quoted above, added to later developments, suggests that similar special privileges attached to the royal demesne in England. There is no trace of such special privilege in *Gerefa*. It seems, then, that little is to be gained from the comparison of these two documents, which in various details bear a close resemblance to each other, beyond the general similarity of organization on great estates in Francia and England.

We are thus forced either to draw deductions from the status of later Ancient Demesne, or else to class the lands of the fisc as differing little from other immunities. Domesday represents many of the royal vills as free from geld, and it seems highly probable that at a much earlier

[1] Gerefa, 5. Cf. De Villis, 63. "Omnia quicquid homo in domo sua vel in villis suis habere debet, iudices nostri in villis nostris habere debeant."

date they "already stood outside the national system of taxation, justice and police," [1] that the ealdorman of the shire and the shiremoot had no jurisdiction over them, and that they were administered by reeves yet more personally dependent on the king than was the shire reeve. The king's booking of land to himself, of which we have several records, is further evidence in favour of this suggestion. The land so booked would be placed under a special royal immunity. If we accept it, the analogy between Frankish and English royal demesne is very close, though at the same time there is no evidence whatever to suggest any other basis for the resemblance than the common ownership of an original royal or princely tradition.

[1] *D. B. and B.* p. 277.

CHAPTER VI

THE CAROLINGIAN AND WEST SAXON MILITARY SYSTEMS

1. *The Carolingian Army.*

In the Carolingian military system no less than in the civil administration of the kingdom, the king is the centre and moving spirit. The old conception of a national right of military service, if it ever existed, has died out; the service is now felt to be a duty, exacted by the king and his servants from unwilling subjects.

(*a*) *The Summons.*

This altered conception is reflected in the inconsistent nature of the summons issued by the king. Men are summoned to a general assembly which is also a national military review; theoretically they are themselves the choosers of peace and war; but they are commanded to come *bene praeparati*—victualled, that is, for a three-months' campaign, and with clothing for six months.[1] Though the annals give evidence of debates on the question of peace and war, these discussions are plainly confined to the magnates; the rank and file have no voice in the matter. The campaigns have been in all probability settled in the autumn council,[2] and are only formally discussed in the Mayfield.

The summons might, however, be issued after the general assembly. In one instance the counts, bishops and abbots returning home from it are ordered to disseminate the information in their own districts,[3] though

[1] 804/11. 168. [2] Hincmar, De Ord. Pal. c. 30. [3] 805/8. 141.

in this case the command is only to be in a general state of preparation for the actual summons when it shall come "per missos aut per epistola." It is, it seems, the missi dominici who are mainly responsible for spreading the news,[1] but the letter to Fulrad [2] is evidence that the summons may be sent direct to a leader himself.[3]

This letter is probably a typical instance of the form of a summons, naming the place and date of the *placitum exercitale*. Some such summons is described in the Annals for 829, when a false alarm causes Lewis to call out all his forces at very short notice against the Danes.[4]

(*b*) *The Obligation to Serve.*

The question as to who should respond to this summons has been much discussed by Waitz and Roth.[5] The majority of later opinions is in favour of Roth's view; that obligation to serve was originally based on personal freedom and not on land ownership. Underlying the whole series of capitularies and deducible from the charters and privileges, is the principle of a traditional universal duty, not as stereotyped as the English Trinoda Necessitas yet clearly of similar character.[6] These duties, to which we have had occasion to refer before, are those of watch and ward, of *scara*—probably a kind of police service—of bridge-building, fortification of cities and service in the host [7] or on ships.[8] The duty of fortification—the

[1] 808. 137–8. [2] 804/11. 168. Cf. Bouquet, VI. 395. Ep. xxv.

[3] This is due to the fact that Fulrad was an immunist, and was therefore in immediate relation to the king, without the intervention of the count. Kroell, p. 182.

[4] *A. L. M.* 829. [5] Waitz, Vol. IV; Roth, *B.W.* and *F.U.*

[6] Note the striking consciousness of this evinced in the Edict of Pistres. 864. II. 322, 27. "Juxta antiquam et aliarum gentium consuetudinem;" and cf. Mühlbacher, *D. K.* p. 132.

[7] 787 ? 197, 7; 800. 84, 16; 815. 261, 1; 801/13. 171, 9; 864. II. 322, 27; 850. II. 87, 8. From 811. 166, 2 it appears that the heriban might be exacted for neglect of any of these duties—perhaps illegally.

[8] 802. 100, 13a refers to the preparation of ships on the sea coast. 811. 167, 11 commands the *seniores* to be ready to go in their ships if the king make a sea expedition. Note the Annals for 791, 806, 817.

English *burhbot*—is rarely referred to in the capitularies. In the Italian Capitulary of 866, the missi are instructed to look to the keeping of *wacta* and also to the *castella*, so that the people may take refuge in them.[1] A capitulary of 820 refers to Pippin's *castella* in Italy,[2] whilst the Capitulary of Quierzy refers to the castella then building at Compiègne and along the Seine and the Loire.[3] The Annals of 806 and 809 also mention the building of forts. These *castella* are the direct results of invasions; Charles's Saxon wars had been characterized by the erection of forts such as Sigiburg and Eresburg, but the use of them for home defence seems new. In this connection an entry of the Annales Bertiniani for 869 is of interest, recalling, as it does, the forts of Henry the Fowler and the *burhs* of Edward the Elder. "De centum mansis unum haistaldum mitti praecepit . . . quatenus ipsi haistaldi castellum quod ibidem . . . fieri precepit excolerent et custodirent."

Of these general duties, however, the host duty is pre-eminent and has developed a dual character. To the defence of the country against invasion all men must come out,[4] free or unfree, without any excuse, though even this duty tends to be specialized and one capitulary exempts the very poorest from its performance.[5] This duty probably merges in that of watch and ward on the marches[6] and on the seacoast.[7] To this duty, as to those of bridge-building and fortification, the count can summon men on his own authority, without orders from

[1] 866, II. 95, 3.
[2] 820. 296, 2.
[3] 877, II. 361, 27.
[4] 847, II. 71, 5.
[5] 866, II. 95, 1. "Qui vero non plus quam decem solidos habet de mobilibus, nil ei requiratur."
[6] 811. 166, 2; 815. 261, 1; 864, II. 322, 27. "Ad defensionem patriae omnes sine ulla excusatione veniant."
[7] 821. 301, 5. Note Einh. Ep. 23. He represents that his men who have performed coastguard duty ought of right to be exempt from the host.

above; and the penalty for disobedience is not the heriban but death.[1] The emphasis on this duty is most marked in the later capitularies, as the danger of invasion becomes more imminent.

The duty of *lantweri* is, however, clearly distinguished in the capitularies from that of *expeditio* or *exercitus*. It is in connection with exterior warfare that the many military capitularies of the Carolingian period are issued. The new problems arising from the extension of the Carolingian Empire call for new expedients; economy of strength is demanded as well as efficiency. Boretius[2] has, however, pointed out the danger of insisting on the novelty of that feature of Charles the Great's legislation which connects the obligation of service with the ownership of land. Similar restrictions had been operating in the Lombard kingdom[3] for some fifty years, and Charles can hardly be looked upon as a wholesale innovator in this respect. The originally universal nature of the duty is attested by the capitulary of 802, in which obedience to the *ostile bannum* is included under the duties covered by the oath of fealty which all free men over twelve years of age must take.[4] The expression *omnes*, which is very frequently found in the military capitularies,[5] is not to be insisted on, as it may merely mean all who have certain qualifications. It is clear, however, that all the regulations of Charles and his successors are in the nature of exemptions and indulgences from a service incumbent on all free men.

In considering these regulations it is necessary to remember Boretius's warning of their fleeting nature. It

[1] 822/3. 319, 18. If, however, the report of an invasion should prove false, those who have failed to obey the summons pay the ordinary legal penalty.

[2] *Beiträge zur Capitularien Kritik*, 1874.

[3] *M. G. H.* Leges, IV. p. 196.

[4] 802. 93, 7.

[5] 792 *or* 786. 67, 6; 807. 135, 3; 805/8. 141, 3.

is possible that he over-emphasizes the transitory and fragmentary character of the capitularies, especially of the military ones; but in some instances [1] the capitularies themselves contain the qualifications of time or space: "Haec autem constituta volumus ut observentur generaliter *praesenti anno*." [2] Generalizations on the subject are thus attended with danger, and the alterations must be followed from year to year. As a chronological account of this legislation has been given frequently,[3] it will be made as brief as possible here.

The first capitulary dealing with the matter that comes down to us is attributed to 807.[4] Here the service has a territorial basis. One man must go to the host from divisions varying in size from three to five *mansi*, the proportion of service to land not being strictly observed. Those who have no real property form groups, the size of which is not specified, to send one man from each group. They also contribute money to the landholders who go to the host. All who have benefices must go. In 808 [5] the rule is more symmetrical and definite. From every four *mansi* one man must go, this condition applying to beneficiary and proprietary land alike.

Later regulations are less definite. The *Capitulare Olonnense* of 825,[6] which applies to the Italian kingdom, classifies men as *mediocres* and *pauperiores*. The latter owe neither service nor *adiutorium;* the former are formed into groups of two, three, four or more who send a man. It is probable that this capitulary refers either to the capitularies already mentioned or to some lost capitulary.[7] In 829 reference is again made to these

[1] 792 *or* 786. 67, 6; 807. 134. [2] 807. 135, 3.
[3] Boretius, 1874. Baldamus, 1879. Waitz, 1885. Prenzel, 1887. Mühlbacher, 1896.
[4] 807. 134. Memoratorium de exercitu promovendo.
[5] 808. 137. Cap. Missorum de exercitu promovendo.
[6] 825. 329. Similar regulations are found 825. 325.
[7] Cf. 805. 123, 6.

groups.[1] The count has control of them, but the missus oversees them; in this year he is ordered to send in a list of those who owe service, indicating the formation of the groups. This clause is re-enacted in 864.[2] Boretius considers it, in view of the state of the Frankish kingdoms, at that date, to have been both an anachronism and a dead letter.[3]

The Italian Capitulary of 866[4] sets a new scale—the wergeld. Every man who owns his wergeld in movable property must serve; he who owns half his wergeld joins with another in the like case, and so on.

Limitations relating to time and space are also found. The ban does not fall everywhere at once; those nearest to the field of war have the heaviest burden. Against the Avars or Spain one in six Saxons goes; against the Bohemians one in three; against the Sorbs all go. From the Frisians all who have benefices and horses must go; of the poorer sort only one in seven.[5] The ordinances are distinctly local in their character; that of 807 refers apparently only to those living west of the Seine.[6]

After the general limitations the more special exemptions for individuals must be considered. In 808 the count is allowed to leave behind four of his landholding men—two to guard his home, two to fill his office.[7] This regulation appears to be still in force in 819,[8] whilst in 866 he is allowed one for each county he holds and two for his home.[9] The bishops (in Italy) are allowed two of their men who dwell without, and four who live in their household.[10] The two are probably *advocati*, mentioned in another capitulary of the same year. Lewis II, however, in his Beneventan Capitulary refuses to exempt advocates.[11]

[1] 829, II. 19, 7. [2] 864, II. 321, 27. [3] Boretius, p. 129.
[4] 866, II. 94, 1. [5] 807 ? 136, 3. [6] 807. 134.
[7] 808. 137, 4. [8] 819. 291, 27. [9] 866, II. 95, 1.
[10] 825. 325, 2. [11] 866, II. 95, 1.

Vassals of royal vassals who are at the palace are exempt if they are with their lords,[1] otherwise special leave must be obtained from the king. In another passage we learn that they must go with the count if their lords are absent,[2] whilst in yet another permission to leave two men at home is granted to all lords, whether royal vassals or not.[3]

In individual cases we find that one brother of a family is allowed to stay at home; one son is allowed to stay at home with the father, whilst the more useful ones go to war.[4] A man who is physically unable may send a poor substitute. The wolf-hunters—two in each *vicaria*—are exempt.[5]

The clergy were forbidden by the capitularies no less than by the canons to bear arms;[6] but throughout the period there is abundance of evidence that they go to the host. The letter of summons we possess is addressed to an abbot, and a capitulary of 744 countenances their going.[7] As Alcuin says, "Bellator spiritalis bellator cogitur esse carnalis."[8] The *Vita Sturmi* and the Epistles of Lupus give examples of the attendance of bishops as well as abbots at the seat of war,[9] whilst the Italian Capitulary of 866 declares that the bishops must go or give proof of serious illness.

Individual exemptions for abbots are, however, found, as a rule naming a substitute to perform the required service;[10] and even more common is the exemption of

[1] 808. 138, 9; 825. 325, 1. [2] 811. 167, 7. [3] 811. 167, 9.
[4] 825. 330, 6; 866. II. 95, 1. In Form. Pat. 3 we have an instance of leave granted to an old man that his son may go to the host in his stead.
[5] 801/13. 171, 8. [6] 789. 59, 70; 802. 107, 18; 803. 120, 8, etc.
[7] 744. 29, 3. "Et abbati legitimi ostem non faciant nisi tantum homines eorum transmittant."
[8] Alc. Ep. 2.
[9] *Vita Sturmi*, c. 24. Lupi Epp. 24, 25, 78; quoted Waitz, IV. p. 593.
[10] See instances quoted Prenzel, p. 85.

all or some of the men of a monastery from military service. At Farfa, for instance, "viginti homines cartulati qui ad ipsum monasterium pertinent hoc anno ab omni hostili expeditione securi et quieti remaneant quales ab eodem abbati provisi fuerunt." [1] Lothar in 840 grants to Murbach exemption from host service for five free men. Again, exemption from heriban, such as is granted to the king's foresters and to merchants in the king's *mund* [2] is equivalent to exemption from military service. The counts are rebuked for infringing these privileges,[3] which grow more prevalent and more comprehensive throughout the reign of Lewis the Pious.

Many, thus, have legitimate exemptions, but frequent illegal attempts are made to escape from the burden of service. Men take the tonsure, without renouncing the world; [4] they surrender their property to the Church [5] or represent the lands they hold as belonging to a clerk; [6] they sell them to laymen; [7] they refuse to leave their lords if these are not summoned to the host.[8] They

[1] Quoted Waitz, IV. p. 591. Cf. other passages in the same note.

[2] Form. Imp. 37. 43,

[3] Bouquet, VI. 337. Lewis to Badurad of Paderborn, 824. "Cognovimus . . . quidam comites memoratum praeceptum nostrum infringere et convellere volent, in eo . . . quod homines tam liberos quam et litos, qui super terram eiusdem Monasterii consistunt, in hostem ire compellant et distringere judiciario modo velint; quod nolumus ut faciant . . . . Illud praeceptum quod . . . fecimus, adsumas, et in praesentia eorumdem comitum in quorum ministeriis res praedicti monasterii esse noscuntur, relegi facias. . . ." The number of monasteries that are exempt altogether from military service in 817 are 18 out of 48 in the northern part of the empire, 13 in Aquitaine, and 18 in Septimania. 817. 350.

[4] 799/800. 230, 44.; 805. 125, 15. Monks and priests were apparently still exempt, though bishops and abbots were not.

[5] 825. 330, 2. This passage indicates the extent to which the ecclesiastical immunity was held to involve exemption from military service. Kroell, p. 187. Cf. Polypticon Irmin. III. 61. "Isti homines fuerunt liberi et ingenui, sed quia militiam regis non valebant exercere, tradiderunt alodos suos Sancto Germano."

[6] 825. 330, 4.

[7] 825. 331, 11; 825. 330. 3,

[8] 811. 165, 8.

surrender their liberty, selling themselves into slavery.[1] Brothers leave their inheritance undivided, so that one may go in place of all.[2] The counts, vicarii, and centenarii are bribed to remit the penalty.[3]

This penalty, the heriban, may be exacted from the offender himself,[4] from his lord,[5] or from the count or *iunior* who connives at the evasion.[6] The lawful heriban is the king's ordinary ban of 60 shillings.[7] As a rule this is the amount exacted, but in 805 [8] there is a graduated scale for it according to the circumstances of the offender, whilst in 825 a lesser punishment is appointed for the first offence,[9] the ban being inflicted on the second, and exile or complete forfeiture on the third. Men were temporarily enslaved, though only with the emperor's consent, for failure to pay the heriban.[10] Further, in the case of royal vassals and beneficiaries the benefice is forfeit,[11] and the missus who condones the offence loses his possessions.[12]

The heriban is exacted by the missus, who is bound to inquire into the cases where it is due.[13] The count is expressly forbidden to exact the heriban,[14] though he receives the third part of it and can exact security for its payment.[15] This appears somewhat to have damaged

[1] 825. 331, 10; 789/814. 185, 5. [2] 825. 330, 6. [3] 808. 138, 6.
[4] 811. 166, 1; 802. 101, 18, etc. [5] 811. 167, 9. [6] 808. 137, 3, etc.
[7] 805. 125, 19; 801. 205, 2; 811. 166, 1; 818/9. 285, 18, etc.. Cf. also Lex Rib. 63 (Codd. A.).
[8] 805. 125, 19. [9] 825. 329, 1. [10] 811. 166, 1.; 810. 153, 12.
[11] 811. 167, 5. [12] 866, II. 95, 3.
[13] 808. 137, 2; 810. 153, 12; 806. 131, 5, etc. Almost all the military capitularies are addressed to missi. Note also Einh. Ep. 51. To a missus; "Homines nostri . . . solent nobis narrare . . . de benignitate vestra erga nos, in eo quod homines nostros servatis et eis parcitis . . . tam in heribannis quam in aliis causis . . ." and also Ep. 42. It is possible that even those immunists who have the right to collect the heriban cannot evade the missus, since their immunity only guards them against the count and his subordinates.
[14] 811. 166, 2; 781/810. 207, 13.
[15] 825. 330, 4. It is to the count, moreover, that the emperor addresses exemptions of individuals from the heriban. Form. Imp. 43. Sen. 19. Sal. Merk. 41.

his authority; the people refuse to obey him and to fulfil the emperor's command because they say they have to answer for it to the missus and not to him.[1] The count and his underlings are also powerless to exact the *conjectum*,[2] that is, either the payment made by those who do not go to the host[3] or else the supplies provided by the countryside for the contingent.[4] *Haribannatores* are appointed to receive the conjectum in 803.[5]

Although the count cannot exact the heriban he is viewed as responsible for the appearance of his *pagenses*.[6] He has to form the groups of men who join to send one of their number to the host,[7] though the missi supervise the groups.[8] The count's power in enforcing the performance of host duty is indicated by the frequent complaints of his abuse of that power. On the one hand he oppresses poor free men till they surrender their property and are unable to go, and the king's service suffers;[9] on the other hand he forces men who have contributed their *adiutorium* to go to the host,[10] takes from men the weapons they have prepared,[11] and forces the same men to go to the host time after time till they are beggared.[12]

(*c*) *Equipment.*

The count is responsible not only for the presence, but for the equipment, of the men. He is bound to see that they are *bene praeparati*.[13] We have seen that the missi shared this responsibility; the centenarii and vicarii are

[1] 811. 165, 6. [2] 801/14. 144, 2.
[3] Roth, *B. W.* 400; 807. 135, 2. "Et unicuique ex ipsis qui in hoste pergunt fiant coniectati solidi quinque a suprascriptis."
[4] Note charter quoted by Waitz, IV. p. 622. "De omnibus redhibitionibus quae ab hominibus ecclesiae recipiuntur excepto hostilense, id est de bobus et coniecto ad carros construendos."
[5] 803. 115, 5. Cf. *Exactor haribanni*, Einh. Ep. 42, and 801–814. 144. 2.
[6] 802. 93, 7. [7] 825. 325.
[8] 829, II. 7, 7; 829, II. 19, 7; 864, II. 321, 27.
[9] 802. 100, 12. [10] 808. 138, 6. [11] 808. 137, 3. [12] 811. 165, 3.
[13] 803/13. 171, 9; 807 ? 136, 3; 786. 67, 6.

also concerned.[1] The character of this *praeparatio*, though seemingly a matter of detail, has really considerable constitutional importance. It is not certain that the obligation to come fully equipped formed a part of the original host duty, though this may be inferred from the reference to *antiqua consuetudo* made in 811.[2] However this may be, the increasing requirements made by Charles the Great's capitularies were due to a number of causes.

As has been frequently pointed out, the extension of Frankish rule involved not only a far longer frontier to defend, but also conflict with new enemies by contact with whom existing military systems could not but be modified. Brunner, in his study on "Der Reiterdienst und die Anfänge des Lehnwesens"[3] traces the change in respect of the use of cavalry which took place in the eighth and ninth centuries to the wars of Charles Martel with the Saracens in Aquitaine. He shows that cavalry warfare was the exception in 732 and the rule in 891,[4] and traces the development throughout the period. The importance of his conclusions lies in the increased requirements made by the cavalry system from those who come to the host. Not only horses, but heavier armour had to be contributed by the warriors; thus we find stringent regulations concerning the byrnies, which are not to be sold out of the country, nor stored up unused,[5] nor lost by those to whom they are entrusted,[6] and are to be furnished by every holder of twelve *mansi*.[7] But it is the requirement of cavalry that most directly influenced the development of institutions.

[1] 808. 138, 7; 808. 137, 3; 811. 165, 2. It is possible that the centenarius assembles the men of the centena and leads them to the military assembly of the pagus. Viollet, I. p. 299.

[2] 811. 167, 8.

[3] 1887. Reprinted in *Forschungen*.

[4] *Forschungen*, pp. 40, 51.

[5] 779. 51, 20; 811. 167, 10.

[6] 800 ? 87, 42.

[7] 805. 123, 6. Also the men of the count, 801/13. 171, 9.

From the description of those who take the oath of fealty in 786 or 792 we infer that all vassals—all, at any rate, who hold benefices—have a horse as well as light armour.[1] In 807 it appears that all Frisians except the very poor have horses.[2] In the letter to Fulrad his men are referred to as *caballarii*,[3] whilst in 828 it is enacted that all who come to the host must have horses.[4] The *Edictum Pistense* of 864, however, expressly mentions the *pagenses* who ought to follow the count on horses as if they had not before had such an obligation.[5] In this same capitulary the heinous nature of the sale of horses or armour to invaders is emphasized: "Quicumque . . . Nortmannis . . . bruniam vel quaecumque arma aut caballum donaverit, sicut proditor patriae et expositor christianitatis ad perditionem gentilitati sine ulla retractione . . . de vita componat." [6]

Thus the distribution of liability among several individuals, and the proportioning of it to the land held by them is traceable largely to the increased requirements of military equipment. On the other hand, the immense development of the beneficiary system under Charles Martel, Pippin and Charles the Great, is attributable to the same cause—the need of cavalry; originally against the Saracens rather than the Northmen, who borrowed the use of horses from the Franks themselves.[7] As we have seen, the obligation of furnishing riders appears

[1] "Deinde . . . cunctas generalitas populi . . . qui ad placita venissent et iussionem adimplere seniorum et conservare possunt, sive pagenses sive episcoporum et abbatis suarum vel comitum homines, fiscilini quoque atque servi, qui honorati beneficia et ministeria tenent vel in bassalatico honorati sunt cum domini sui et caballos, arma et scuto et lancea, spata et senespasio habere possunt; omnes iurent." 786 *or* 792. 67, 4.

[2] 807 ? 136, 3.

[3] 804/11. 168. Mr. Oman's emendation (*Art of War*, p. 82) is unnecessary and misleading.

[4] 828, II. 5, A. [5] 864, II. 321, 26. [6] 864, II. 321, 25.

[7] Miracula S. Benedicti, *M. G. H.* SS. XV. p. 494.

to have been incumbent on the benefice from the first,[1] and the natural method of strengthening the Frankish army was thus the granting out of lands to be held by such a tenure.

Food and clothing, as has been said, were supplied by the men;[2] whilst the count provides fodder, tools for siege or camp use,[3] and carts,[4] which are probably exacted by him from the countryside. Further supplies are furnished by the crown vassals,[5] the royal vills,[6] and the monasteries.[7]

(*d*) *The Leaders.*

So far the army has been considered from the count's point of view, but the responsibilities of the *senior* are parallel with those of the count in the matter of equipment and control, whilst Fulrad's letter illustrates the independent position of the immunist. The *senior*, no less than the count, is bound to see that his men are present at the set place and time and are well equipped;[8] the *senior*, no less than the count, pays the heriban and forfeits his benefice[9] for conniving at an evasion. He likewise leads his men to war, as the count leads the *pagenses*,[10] and it is only in his absence that they march with the other men of the county.[11] In Fulrad's summons the second rank of vassals is mentioned; the vassals of the abbot go under his command, but each with his own men, for the better preservation of order. The *senior* has a definite official position in the army, and it is not

[1] 743. 28, 2. Cf. Hincmar's letter, 858. II. 432. "De quibus consecratis Deo rebus . . . ideo constituerunt apostolorum successores, hoc ordinari, ut . . . augeretur per dispensationem ecclesiasticum regni militia." Note also the riding service of 810. 252, 8.

[2] 804/11. 168; 811. 167, 8; cf. 866, II. 96, 6. [3] 801/13. 171, 9, 10.

[4] 801/13. 171, 10. [5] 807. 135, 3. [6] 800 ? 85, 30; 800 ? 89, 64.

[7] 810. 250, 1; 810. 252, 8. [8] 811. 167, 9; 810. 252, 8. [9] 811. 167, 5.

[10] 808. 137, 1; 811. 167, 9; 811. 165, 8. The missus selects from the crown vassals in each county the one most fitted to lead the different troops of men under the command of their *seniores*. 807. 135, 3.

[11] 808. 137, 1.

difficult to foresee that he will supersede the count in the future, as the seignorial and beneficiary relationship comes to dominate society.

On the march to the placitum the counts or the *seniores* are the leaders; in our records of the wars themselves the larger organization by nations rather than by counties is alone traceable.[1] Frequent reference is made in the Annales to *scarae*, or troops, by which most probably these national contingents are intended. The *scara francisca* has the place of honour. The "missi qui super exercitum nostrum constituendi sunt" referred to in 808,[2] seem to have some superior command. The missi who lead the army in Saxony in 782 [3] are a count of the palace, a count of the stable, and a camerarius; [4] whilst the king's sons and grandsons,[5] dukes,[6] counts of the march [7] and other counts,[8] figure as generals in the Annals.

The capitularies contain various detailed rules [9] of discipline, the most important of which is the infliction of the death penalty for the well-known crime of *herisliz*, or desertion.[10]

Thus by the end of the Carolingian period the Frankish army is well on its way to become a feudal army. The count with all his military powers and duties is being superseded by the *senior* as a leader; the universal obligation is being narrowed down so that it lies on the holders of benefices only and their men; and special

[1] Flach, III. p. 470. "L'armée présenta l'aspect d'une fédération placée sous l'hégémonie, sous . . . la suprématie du groupe ethnique des Francs."

[2] 808. 138, 8. [3] *A. L. M.* 782. [4] *A. Q. D. E.* 782.

[5] Ann. 784, 794, 796, 797, 800, 805, 806, 808, 812, 824, 827.

[6] Ann. 796, 819, 827. [7] *Ibid.*, 799, 822, 827.

[8] *A. Q. D. E.* 782, 799. Seneschal, 786.

[9] 804/11. 168; 823/5. 305, 17; 768. 43, 6; 866, II. 96, 6, 8; 811. 166, 3.

[10] 811. 166, 4. Note Tassilo's case; also one referred to in Mühlbacher, *D.K.* p. 251. A man has forfeited his lands because of his desertion of the younger Pippin; he is now pardoned and reinstated.

exemptions, granted right and left by royal weakness, are destroying the last vestiges of the old tradition of a national army.

2. *The West Saxon Army.*

In comparing these two systems, due allowance must be made for the different problems that faced the Frankish and English rulers. The warfare of Charles the Great and Lewis the Pious was mainly though not solely aggressive in character. Punitive expeditions in consequence of frontier troubles occupy the greater part of the time, and though the invasions are a menace at the end of Charles's reign, and a national danger by the end of Lewis's, they are hardly as yet a standing plague. The English wars of the ninth century are a struggle for self-preservation. Again, the highly centralized organization of Charles does not appear to have much in common with the methods of Alfred and Edward, whose warfare seems rather to resemble that of their Frankish contemporaries, characterized as it is to a great extent by purely local effort. Yet in the ninth century we see on one side of the Channel kings losing control of the national forces, allowing each part of the realm to face its own difficulties unaided, leaving the post of danger to make a family compact or settle a family grudge; whilst on the other, the kings are found rising to greater power by controlling existing resources for defence and re-shaping them to more effective use. The true parallel to Charles the Bald's Francia is not the England of Edward, but the England of Æthelred II; and, allowing for the different scale of operations and in spite of different conditions, there are some elements common to the military systems of Charles the Great and of Alfred.

It is, indeed, largely because the West Saxon kings take the initiative and modify the existing system for their own purposes that we might expect to find traces

of exterior influence. As to the fact that some definite innovation or reform in military matters took place under Alfred, all writers seem to be agreed, but as to its precise nature, certainty seems unattainable. Here again the materials are scanty and lamentably fragmentary. The greater part of our information on the English army is derived from the contemporary accounts of the wars with the Northmen given in the Chronicle; but the laws give some particulars, and inferences may be drawn from some of the Domesday entries, though with no chance of chronological definiteness.

(*a*) *The Summons.*

Thus there is no clear indication of the method pursued in calling together the fyrd. The Chronicle for 905 says, "Then King Edward went after them as speedily as he could gather the fyrd." In the exceptional year 898 Alfred goes against the Northmen, "with that portion of the men of Somerset that was nearest." From the account of the years 860–878 it may be gathered that there was no standing on ceremony in these things. It is most probable that the ealdormen who appear so constantly with the men of the shire called out the fyrd, each by his own authority when needed. This would be strictly in accordance with the Frankish custom of allowing the count to summon the forces of the pagus for home defence without royal commands. In cases where the whole force of the West Saxons goes out against an external enemy,[1] we might safely hold that a more formal summons was issued on the part of the king.[2]

(*b*) *Obligation to Serve.*

The question next arises, as in Francia, who were bound to obey the summons? Nowhere, any more than in the

[1] Chron. 823, 827, 828, 853, 911, etc.

[2] Cf. V. Atr. 28, where a heavier penalty is assigned for desertion of the fyrd if the king himself is there.

Frankish records, is there to be found a general statement of military obligation. From Ine 51 it appears that the duty of attendance at the fyrd was incumbent in Ine's time on the gesithcund man, with or without land, and on the ceorl. Throughout the pre-Conquest period we find references to the Trinoda Necessitas in a series of charters running from 767 to 1066.[1] All but the very earliest examples are West Saxon. In each case land is freed from every public burden but the three—"arcis et pontis constructio et expeditio." These three duties are also found in juxtaposition in the Laws,[2] but only in those of late date. In one instance *scypfyrdung*[3] is added to the three.

Thus it would seem that in England as in Francia the duty of military service forms part of those prime public duties which are incumbent on every man, at any rate in the earliest times of Wessex. The ceorl of Ine 51 is not qualified as landowning or otherwise; it is hardly too much to infer from this passage the duty of every freeman. We have noted before that there is only one instance in the charters of total exemption from *fyrd fœreld*,[4] whilst in Francia total or partial exemptions are far more common, and only two of the diplomas expressly reserve the duty in a formula parallel to that of the English land-books.

In all passages later than Ine's laws (which, it must be remembered, in all probability operated under Alfred) the relation of land to service is apparent. It is the land on which the Trinoda Necessitas lies; the thegn of *Recti-*

[1] B. 201, 357, 427, 447, 475, 476, etc.; K. 651, 729.
[2] V. Atr. 26, 1; VI. Atr. 32, 3; II. Cn. 10; II. Cn. 65.
[3] VI. Atr. 32, 3. As in Francia, naval service is included under the universal duty. Naval battles are recorded in the Chronicle, 833–885. Alfred's naval force is described as the *sciphere*, and in 911 Edward has 100 ships. The importance of ships is brought out very strongly in Æthelred's legislation. V. Atr. 27; VI. Atr. 32, 3; Chron. 1008.
[4] See above, Chapter V, p. 119.

tudines Singularum Personarum owes service from his land,[1] whilst, though the older interpretation of *utware* must now be abandoned,[2] it appears that some special services were owed from the land, and riding service among them,[3] and, as Maitland has suggested,[4] this is three parts of the way to military service. The *Northleoda laga* [5] again represents the thegn's privileges, and, we may presume, the thegn's duties, as attached to five hides of land.

Unfortunately, these references are mainly taken from fragmentary documents of a late or doubtful date; documents which record rather customs than enactments.[6] The evidence of Domesday is even more disjointed and more doubtful in date, lacking as it is in means for estimating the antiquity of the customs it records. It has been shown, however, that the five-hide unit runs through Domesday,[7] and that it is a basis for military service.[8]

The entry for 894 in the Chronicle leads us to attribute considerable military innovations to Alfred's reign. The two chief novelties recorded there are the exemption of half the fyrd at a time from service, and the erection and garrisoning of burhs. Another indication given by the Chronicle is the frequent mention of king's thegns at this period as fighting and falling in the wars.[9] Again,

[1] Rect. 1.
[2] Round, *F. E.* p. 117; Vinogradoff, *Growth of the Manor*, pp. 239, 284.
[3] Geþincðo, 2, 3. [4] *D. B. and B.* p. 307. [5] Norðleod. 9, 10.
[6] Note Geþincðo, 1; "Hit waes hwilum on Engla lagum."
[7] Round, *Feudal England.*
[8] Wilton either pays 20 shillings or sends one man for five hides. Dd. I. 64b. Exeter is rated at five hides for expedition by land or sea. Dd. I. 100. In Wiltshire three men held four hides; two of them render five shillings and the third serves *sic tainus.* Dd. I. 67b. The Berkshire Domesday gives the classical instance of one soldier going from every four hides. Dd. I. 56b. Though it must be remembered, especially in the case of the boroughs, that the Domesday hide is a fiscal rather than a territorial unit, the territorial basis of such a scheme of assessment is unmistakable.
[9] Chron. 871, 874, 897, 905, 917.

there is Asser's reference to the service rendered by Alfred's *satellites*.[1] Taking these facts in conjunction with the later passages in Domesday and elsewhere, it seems a working hypothesis that Alfred availed himself of the territorializing tendency of the king's thegn to serve the needs of the country, and obliged all who owned a certain number of hides to perform a special duty, granting to all who owned that number a special privilege. It has been suggested that the special duty in the king's hall performed by the *satellites* was connected with the duty of keeping the burhs, as the king moved about from place to place, having no fixed court, and Asser refers to the construction of new *aulae* [2] which have been identified with the burhs.

If it could be proved that this direct proportion between land and service was established by a single legislative act, the question of conscious imitation or adaptation from Frankish systems would arise with some urgency. To quote Maitland: "It may well be doubted whether the five-hide rule had not been borrowed by English kings from their Frankish neighbours." [3] We have seen, however, that Charles the Great was not the originator of the plan of proportioning service to land held. We have also seen that there is no great likelihood of the establishment of a fixed proportion between land and service under the Carolingians. The unit varied from two to five *mansi* in two years, and statistics for other years are not given. Professor Vinogradoff has pointed out the discrepancy in size between units of three *mansi* and five hides, though he offers explanations for it.[4] Again, other bases

[1] Asser. c. 100: "In tribus namque cohortibus praefati regis satellites prudentissimi dividebantur, ita ut prima cohors in curto regio . . . commoraretur, menseque finito et adveniente alia cohorte, prima domum redibat."

[2] Asser c. 91.

[3] *D. B. and B.* p. 161 (footnote).

[4] Vinogradoff, *Eng. Soc. in the Eleventh Cent.* p. 34.

of calculation are found in Francia, such as personal property, and the distance of the country from the field of war. It is contended, however, that the underlying principle is the same in the two countries. On the other hand, it must be remembered that the five-hide unit is found as early as the laws of Ine as a standard for the wergeld, and for the value of an oath.[1] Alfred's conjectural innovation may have been no more than the application of this unit to military purposes.

We find the parallel, however, not only in the selection of the soldiers, but even, in one Domesday entry,[2] in the contributions made by those who do not go; and in the furnishing of armour from every eight hides in 1008 [3] we are reminded of the regulations of 805. Nevertheless, there seems on the whole no positive evidence to justify a theory of conscious imitation; we can go no further than Stubbs,[4] hardly as far as Maitland.

Again, even though the relation of land to military service be traced back to the days of Alfred, it is impossible to believe that the fyrd whose movements are recorded in the Chronicle consisted only of king's thegns.[5] Here

[1] Mr. Chadwick has pointed out the apparent existence of a six-hide unit for military purposes as early as 800 in Mercia. *The Origin of the English Nation*, p. 158. B. 201.

[2] Dd. I. 67b. [3] Chron. 1008.

[4] "A strong current of similar events will produce coincidences in the history of nations whose whole institutions are distinct; much more will like circumstances force similarly constituted nations into like expedients; nay, great legislators will think together even if the wants that suggest the thought be of the most dissimilar character. No amount of analogy between two systems can by itself prove the actual derivation of one from the other." Stubbs, *Constitutional History*, Vol. I. (6th ed.) p. 226. Note also Vinogradoff, *Eng. Soc. in the Eleventh Cent.* p. 30: "The same reasons which produced the Lombard Assize of Arms, and the graduated service of Charlemagne's armies, secured the transformation of the fyrd from a general force of free tribesmen into an array of specially selected warriors."

[5] Compare the Alfredian version of Bede, where the *folclic man* on the fyrd is contrasted with the king's thegns, (Latin: *rusticus, milites*). Bede, H. E. IV. 22.

the Frankish law that all must appear in defence of their country is recalled.[1] The force that meets the Northmen under the lead of the ealdorman consists of all the men of the shire. Quite apart from any five-hide rule or official exemption, it is probable that a gradual process of specialization had been going on, and that "the forces of the shire" meant, in its widest sense, "an array not of the whole able-bodied population, but of representatives of all the householders of the county."[2] On two occasions a distinction appears to be made. In 865 the people of Kent promise money for a peace. This may be explained as a transaction of the people without the lead of their ealdorman, who, as we have seen, probably called them out to war. In 914 the country folk about Leighton fight against a troop of Northmen and put them to flight. Here we have apparently the rising of a smaller local unit than the shire.

We have already referred to the general exemption of 894 by which half the members of the fyrd were freed from expeditionary service, whether for home defence or for gathering in the harvest. But the process of granting official exemptions was going on, as in Francia, though probably not to so great an extent. The evidence is, however, for the most part of a late date. In the Mercian charter of 767 referred to above it appears that five men only need be sent from the lands in question.[3] The best examples, however, are not found till Domesday Book. Here the boroughs compound for their due service with twenty, twelve, or ten men,[4] and there are signs of "beneficial hidation." Though exemptions from *fyrdfare*

[1] It seems quite possible that in Wessex also a distinction is drawn between "expeditio" and "lantweri." Cf. J. H. Clapham in *E. H. R.* (1910), p. 293, and note the two fyrdwites of Domesday Book. Vinogradoff, *Eng. Soc. in the Eleventh Cent.* p. 111.

[2] Vinogradoff, *Eng. Soc. in the Eleventh Cent.* pp. 26, 34.

[3] B. 201.

[4] Dd. I. 154; I. 230; I. 238.

are hardly to be found in early charters, one of Edward the Confessor's records the granting of *fyrdwite* to Ramsey Abbey,[1] and the laws of Cnut refer to such concessions.[2] If the power to exact the *fyrdwite* is surrendered, exemption from the fyrd is practically conceded.[3]

This penalty is 120 shillings and the forfeiture of land for the gesithcund man who owns land; 60 shillings for the gesithcund man without land, and 3 shillings for the churlish man.[4] There is no legislation on the subject between the times of Ine and Cnut, where the same penalty is found. For neglect of the Trinoda Necessitas a man must pay 120 shillings in the English law and according to old custom in the Dane law. The *fyrdwite* goes to the king and to no other unless he will concede it to any man.[5]

(*c*) *Organization.*

Our chief material for the organization of the fyrd is again to be found in the Chronicle. It almost always assembles by shires. In the years 800, 837, 845, and 905 we find the men of the shire mentioned as a military detachment, whilst the word is found by itself in 894.[6] As a rule it is the ealdorman who leads, though in the case of a more general effort it is the king. In 823 Egbert sends his sons, a bishop and an ealdorman against Kent. In 827–828 he leads troops against the Northumbrians and the North Welsh, whilst in 905 Edward not only gathers the fyrd and leads the expedition, but he disbands it and leaves the men of Kent, who refuse to obey, to be surrounded and cut up by the Danes.

[1] K. 853. [2] II. Cn. 12, 15.

[3] The heriban similarly is granted in Francia. Charter for Prüm. (775): "Ut nullum heribannum . . . solvere non debeat, sed ad ipsum sanctum locum sit concessum atque indultum." Mühlbacher, *D. K.* p. 153.

[4] Ine 51. [5] II. Cn. 12, 15.

[6] "Se cyng mid þaere scire þe mid him fierdedon."

We have already referred to the entry of 894, and suggested that it has bearing on a general levy under the king rather than a local rising for home defence. Another reference to this system is found under 921: "And when that *fierdstemn* went home, then went another out and reduced the burh." It is possible that in executing the king's command the ealdorman decides whose turn it is to serve and whose to remain, as the count does in Frankland, but there is no evidence for this.

Burhbot is the second item of the Trinoda Necessitas, and there is frequent mention in the Chronicle of the burhs whose erection forms a conspicuous part of Alfred's policy. From 894 on we hear constantly of "the men that held the burhs." In 886 Lundenburh had been committed to the keeping of an ealdorman, and in 894 the *burgware* of London help in the fight against the Northmen. Every burh east of the Parret contributes its assistance in pursuing the army in that year. In 896 the men of London again capture some ships. In 910 begins the account of the burh building of Edward and Æthelflæd, in which some twenty-five burhs are mentioned by name. The shire is not so frequently mentioned now as the fighting unit. In 905 the men of Hereford and Gloucester and the nearest burhs oppose the Danes on the Severn; in 921 "a great body of people from the nearest burhs, who could then go," take Tempsford, and later another force from Kent, Surrey, and Sussex, everywhere from the nearest burhs, take Colchester. These entries appear to indicate a substitution of the burh for the shire as a military unit,[1] which may be attributed to the altered conditions of warfare with the Danes. Offensive are replacing defensive operations; siege warfare is superseding pitched battles. A somewhat similar development is traceable on the Continent, as we have seen from

[1] Compare Mr. Chadwick's theory of the burghal system.

the passages that deal with the erection of *castella*. It is conceivable also, that the burhs and the *castella* might rest on a similar basis of contributory land holdings. Similar military tactics, however, might well be suggested by the attacks of the same enemies.

(*d*) *The Leaders.*

The leaders of the fyrd, as has been shown, are the ealdorman, the æthelings and the king. An ealdorman was in command at London, and in 906 there is mention of the death of a *gerefa* at Bath.[1] The leadership of the men of the burhs is thus doubtful. No other military divisions than the shire are mentioned; the king's thegns are not described as having any special command. It is probably at a later date that the seignorial leadership of military bodies begins. At Maldon the ealdorman has his own following, and there is the right feudal ring in the account of their relations with him. But he is leading other forces of the shire, and though his household troops owe him an especial loyalty, the question of transferred responsibility hardly arises. In Domesday, however, there are some few instances of this. In Worcestershire a man pays 40 shillings to his lord if he neglect the *expeditio*, but he is in the king's mercy if he have his own sake and soke.[2] A member of vills owe to Taunton "profectio in exercitum cum hominibus episcopi."[3] The analogy here evidently forms part of the larger parallelism of seignorial institutions which has already been discussed.

[1] The gerefa may conceivably have some military functions, though there is no trace of them in the records beyond this passage and the references to the problematic high reeves of Northumbria. When the sheriff at a later date acquires military functions it is as the ealdorman's substitute.

[2] Dd. I. 172.

[3] Dd. I. 87b. Note also the four men who owe *expeditio et navigia* to the Bishop of Worcester, Dd. I. 173; the service owed by Hamtone, Heming Cart. i. 77.

(*e*) *Cavalry.*

The question of the use of cavalry is of less importance here than in Francia. The evidence of the Chronicle is on the whole in favour of Mr. Beck's [1] opinion that the fyrd of the ninth century was a mounted force, though it probably fought on foot.[2] The reference to the horses in the ealdorman Æthelwold's will,[3] as well as the riding duty of the thegn and of the *radmanni* of the West Midlands is also in favour of this theory. On the other hand, it seems very difficult to determine whether the use of cavalry was an Alfredian innovation. If so, it is traceable indirectly to Frankish influence, since, as we have seen, the Northmen learnt the use of horses from the Franks, and it was to cope with the attacks of the Northmen that any innovations on Alfred's part were introduced. But it has also been suggested [4] that the invaders learnt the use of horses from the native English, who certainly possessed horses in large numbers.

Beyond this it does not seem probable that the English system was influenced by the Carolingian system. The positions of the ealdorman and the count are in all likeli-

[1] *E. H. R.* (1906) p. 766.

[2] The verb *ridan* is used of the fyrd as a whole in 894 and 896, and in 894 there is a reference to the horses' eating up of the corn round the Danish fortifications. *Ridan* is used of individuals, kings, ealdormen and thegns in 787, 800, 871, 878, 901. The riding of the Danish *here* is mentioned in 870, 871, 878, 917; their getting of horses 866, 876, 881, 885, 892. The usual verb of motion for the fyrd is the colourless *faran*. At Maldon the warriors dismount from their horses and fight on foot, but only the thegns may be meant. In 1055 the Chronicle appears to attribute the defeat of the English by the Welsh to their use of horses. Flor. Wig. "contra morem in equis pugnare iussit." Mr. Clapham, however, explains this as meaning that the rout was so speedy that the warriors had not even dismounted in order to fight before they were put to flight. Fighting on horseback was not known here till 1066. *E. H. R.* (1910) pp. 287 ff.

[3] K. 1173 (A. D. 955?).

[4] Chadwick, *Origin of the English Nation*, pp. 158 ff. And note Eddius, Vita Wilfredi, c. xix. "Rex Ecgfrithus . . . statim equitatui exercitu praeparato." *Historians of Church of York*, p. 30. (Rolls Series.)

hood traceable in each case to a military origin; their functions are naturally similar, and the assistance, if any, given by the gerefa or centenarius is also readily explicable. The shire system is perhaps more essential to the effectiveness of the army in England than is the pagus organization in Francia. Its value is revealed by the despairing entry of Æthelred's Chronicle no less than by the records of Alfred's reign. "At last there was not a chief man who could gather a force, but each fled as he might, nor even at last would any shire assist another." [1]

The special incidence of the duty on land, as we have seen, is not sufficient evidence of imitation on the part of the English kings. The erection of burhs, the great strategical innovation of Edward and Alfred, is very evidently directly suggested by the emergency, and is fully explicable on that ground alone; nevertheless, it is quite possible that the experience of the Frankish kings may have been applied by Alfred,[2] since, as the Chronicle shows,[3] he kept close touch with the efforts of his neighbours across the Channel against their common enemy.

[1] Chron. 1010.

[2] It has been suggested that the building of fortified bridges recorded by the Chronicle in 896 was a measure copied from Charles the Bald's in 862 (Ann. Bert.).

[3] Chron. 880–893.

CHAPTER VII

CONCLUSION

THE local institutions of the Carolingian Empire and the West Saxon Kingdom having been examined and compared step by step, the original question can be considered as a whole. Do the sources indicate the direct indebtedness of one country to the other? Did the West Saxon kings borrow the policy or the institutions of the Carolingians? The answer has been anticipated in the preceding pages, but a summary of the results may be attempted here.

It was shown at the outset that there is evidence, sufficient if fragmentary, of a close and constant communication between the two countries from the eighth to the tenth centuries, and that there was thus nothing to make such a course of imitation or adaptation impossible. It was noted at the same time that the Church was the main channel of communication, and this in itself is in favour of a close constitutional connection. There was a constant give and take of canons and penitentials, pastors and masters, between the two countries. To quote Stubbs: "It would be very rash to affirm that while the bishops who composed so large a part of the witenagemot sought foreign models for their canons, they did not seek foreign models for their secular laws." [1]

Such an affirmation is not made here. A possibility, however, does not make a probability. Positive evidence

[1] Stubbs, *Constitutional History*, Vol. I. p. 224 (6th ed.).

is needed, and this is almost completely lacking. There are exceptions; as we have indicated, at least one institution suggests almost irresistibly a foreign origin—the *laen*. When the evidence has been considered it is difficult to avoid the conclusion that this particular form of land-grant came from Francia. But, as with the land-book itself, the *precarium* once on English soil assumes an individuality of its own. Introduced before the Carolingian period, it shows no trace of later foreign influence, unless, as we have pointed out, that of terminology in one or two instances.

The evidence for the development of the English immunity from a Frankish origin is more dubious. Again the almost complete lack of terminological evidence is striking. The borrowing, if such there were, must have taken place at an early period, and the probabilities again seem against any later indebtedness of England to Francia.

When these semi-ecclesiastical institutions have been considered, the positive evidence—which is, in fact, barely more than the use of a few technical terms, that may be as purely literary as Asser's *paga* for shire—has been exhausted, and there remains merely a series of close analogies. Close as these are, however, not one of them suggests a direct translation from one language to the other. Alfred, of all compilers the most eager to give honour where honour was due, makes no reference to the capitularies of his transmarine neighbours in his preface to the laws. In no document is there any direct reference to such a relation between the institutions of the two countries as may be suggested by the frequent resemblances we have noted.

Such resemblances would of themselves be valuable, though not conclusive, but for the common origin of the institutions of the two countries. Resemblances, and

close resemblances, are not confined to the English and Frankish nations: striking analogies are to be found in all the Germanic codes and records. This common ancestry of institution is sufficient to explain much, if not all, of the parallels that have been noticed.

To turn from detail to the general type, it is noticeable that whilst under the Carolingians Frankish law is so closely intertwined with Roman tradition and form as to be forced to stand or fall by it, Anglo-Saxon law has been described as "an especially pure type of Germanic archaism." [1] The few distinctively foreign introductions that have been mentioned are stamped by their Roman origin, in spite of the special development they take on English soil. Any foreign innovation might be expected to leave a more distinctive trace than is to be found. The traces of Danish influence, though without the unmistakable Roman tinge of Carolingian institutions, are immediately noticeable.[2]

This argument must be taken for what it is worth. It is purely negative in character, as are, in fact, the whole results of the investigation here attempted. To quote Stubbs again: "Although we may be inclined to claim for the institutions which came to full growth on English soil a native or at least a common Germanic origin, it is wiser and safer to allow the coincidences to speak for themselves." [3] Thus, in reply to the original question: Did the West Saxon kings borrow from the Carolingian emperors? we can only reply that it is possible but hardly probable.

[1] P. and M. I. p. 22.
[2] See Vinogradoff, *Eng. Soc. in the Eleventh Cent.* pp. 4 ff.
[3] Stubbs, *Constitutional History*, I. p. 226 (6th ed.).

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